

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS RIEL, et al.,)
 Plaintiffs)
)
 v.) CIVIL ACTION NO. 04-90 ERIE
)
CITY OF BRADFORD,)
 Defendant)

HEARING ON PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION

Proceedings held before the HONORABLE

SEAN J. McLAUGHLIN, U.S. District Judge,

in Courtroom C, U.S. Courthouse, Erie,

Pennsylvania, on Friday, April 23, 2004.

APPEARANCES:

PHILIP B. FRIEDMAN, Esquire, appearing on behalf
of the Plaintiffs.

WITOLD J. WALCZAK, Esquire, appearing on behalf
of the Plaintiffs.

RICHARD A. LANZILLO, Esquire, appearing on
behalf of the Defendant.

TRACEY D. JONES, Esquire, appearing on behalf of
the Defendant.

Ronald J. Bench, RMR - Official Court Reporter

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3 WITNESSES: DIRECT CROSS REDIRECT RECROSS

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5 FOR THE DEFENSE:

6 John Peterson 24 90 125 131

7 Merle Silvis 136 143 -- --

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11 FOR THE PLAINTIFFS:

12 Frederick Pysher 147 156 -- --

13 Thomas Riel 162 173 -- --

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1 P R O C E E D I N G S

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3 (Whereupon, the proceedings began at 10:00 a.m., on
4 Friday, April 23, 2004, in Courtroom C.)

5

6 THE COURT: This is the time we've set for hearing
7 on the plaintiffs' motion for a preliminary injunction relative
8 to Chapter 178 and Chapter 125 of the Bradford Ordinance

9 dealing with signage in various particulars. First of all, I

10 received a reply brief filed by the plaintiffs, that I got in

11 my hands this morning, I've had an opportunity to read it.

12 Have the defendants received it as well?

13 MR. LANZILLO: We received it, it came by fax five

14 minutes before we left for the courthouse, so I have not yet

15 had an opportunity to read it.

16 THE COURT: All right. It's not that long, you'll

17 have an opportunity during a break to look at it, we'll be

18 talking about it later on. I thought the way that we would

19 proceed this morning and I take it probably into the afternoon,

20 given the number of potential witnesses that I perceive might

21 be called, is this. I'd like to hear a brief opening statement

22 from the plaintiffs. And then I'll hear a brief opening

23 statement from the defendants. I have read all the papers, I

24 have read what I consider to be the relevant cases. I have

25 many questions for both sides, which I'll just take up as it

1 becomes appropriate during the course of the hearing.

2 After the opening statements, then it seems to me

3 the most intelligent way to proceed, Mr. Lanzillo, is for the
4 City to put on evidence concerning the background and purpose
5 of these statutes. The reason or reasons for the various
6 exemptions or exceptions that are at issue at least in part
7 here.

8 And then at the conclusion of your evidence, the
9 plaintiffs will have an opportunity to put on any witness or
10 witnesses, presumably one or more of the plaintiffs, I gather.
11 And I will say, particularly insofar as it relates to 178 or
12 Chapter 178, I am most interested in your theory of standing
13 relative to that ordinance. All right, are we ready to go,
14 okay, sir.

15 MR. WALCZAK: Thank you, your Honor. I don't want
16 to take a lot of time, I think we've laid out our arguments in
17 the application for preliminary injunction. In a nutshell,
18 there are two ordinances that are being challenged here.
19 Chapter 178 and Section 125.15 --

20 THE COURT: Could I impose upon you, could I ask you
21 to come up to the podium there. This is not a real good
22 courtroom for acoustics unless you're at a mike. All right,
23 Mr. Walczak.

24 MR. WALCZAK: Thank you, your Honor. Should I start

25 over?

5

1 THE COURT: I've heard the first part, go ahead.

2 MR. WALCZAK: In a nutshell, plaintiffs' argument
3 comes down to the following. The City of Bradford has two
4 ordinances that treat signs differently based upon the message
5 in the sign, based upon the content. They also have instituted
6 a permitting system with some exemptions. Again, the
7 exemptions are based on content. And both the content-based
8 distinctions, the licensing system, and the fact that they are
9 regulating expression on private property, any one of those
10 three would trigger strict scrutiny. Three of them together,
11 clearly strict scrutiny applies here. The City of Bradford
12 would need to show that they have a compelling interest that is
13 narrowly tailored to advance whatever its interests are.
14 Presumably, the interests here are aesthetics.

15 THE COURT: And/or safety.

16 MR. WALCZAK: The safety is, again, and the problem
17 with content-based distinctions is that they undermine either
18 the aesthetic or the safety justification. Because why is

19 Joe's Pizza any more aesthetically pleasing or less dangerous
20 than Vote For Joe, to the extent you're making those kinds of
21 distinctions. But I'm sure we'll can get into all the details.

22 I don't know if your Honor has questions at this point?

23 THE COURT: I just have one quick question as we get
24 out of the blocks here. With respect to 178, which exempts
25 largely -- well, by way of example, real estate signs on a

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1 property which is being sold, professional nameplates,
2 occupational signs where there's construction work going on,
3 indicating who's doing it, (A) through (H) are largely either
4 commercial or legal traffic signs, that type of thing. (I)
5 which apparently was an amendment to the previous statute,
6 includes noncommercial signs not exceeding 12-foot square
7 placed upon private property by the owner or occupant of said
8 property. My question as to each of the three plaintiffs here
9 today, how have, and how do you anticipate the evidence that we
10 take will show, how have any of them been harmed by the
11 application of 178?

12 MR. WALCZAK: Your Honor, as we understand the

13 regulatory scheme, 125 applies just in Bradford's Historic
14 District.

15 THE COURT: That was my next question, what is the
16 scope of its application?

17 MR. WALCZAK: As we understand the process, to get
18 approval in the Historic District, first you have to go through
19 HARB and the 125 process. If you are approved there, then you
20 are subject to 178.

21 THE COURT: So 178, your understanding is, that the
22 scope of 178's reach does not stop at the historic borders of
23 Bradford. So people living within the Historic District, then,
24 you think the evidence will show, are subject to two chapters,
25 whereas, people living outside the Historic District are

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1 subject to one, is that right?

2 MR. WALCZAK: That is our understanding. In
3 response to one of the questions your Honor indicated you'd be
4 asking is what is our standing?

5 THE COURT: Yes.

6 MR. WALCZAK: I would point to, I don't know if it's

7 cited in our papers, the most recent Third Circuit case I'm
8 aware of is Peachlum_v._City_of_York, 2003 case. That, again,

9 involved a challenge to a sign ordinance. There, primarily,
10 the defendants had raised ripeness and exhaustion arguments.
11 But there is a long discussion about the importance and the
12 ability of plaintiffs to be able to bring facial challenges to
13 laws that infringe on free expression. And it very clearly
14 says that even if the law has not been applied to people, but
15 could be applied to people, that they have standing to
16 challenge that. And then Peachlum follows the City_of_Lakewood

17 and the Cincinnati_v._Discovery case. There's a long line of

18 Supreme Court cases to support that.

19 THE COURT: All right, thank you, Mr. Walczak.

20 MR. WALCZAK: Thank you.

21 THE COURT: Mr. Lanzillo.

22 MR. LANZILLO: Thank you, your Honor. Your Honor,
23 if you would permit me, I would like to speak for a few
24 minutes, I believe that my comments will actually expedite our
25 case. I don't anticipate calling more than one or two

1 witnesses on behalf of the City of Bradford. My ability to do
2 that is in part tied to laying out where we'd like to go with
3 our proof.

4 THE COURT: All right.

5 MR. LANZILLO: Your Honor, let me begin with what I
6 refer to as the general sign ordinance, Chapter 178. And let
7 me start first with the permit requirement under that
8 ordinance. And this is the ordinance of general application
9 throughout the City of Bradford. When we present evidence to
10 show the governmental interests and public interests that that
11 ordinance is designed to further, it's helpful to see the types
12 of signs that we're regulating and why we're doing so.

13 To that end, we'll be offering a few photographs
14 into evidence, including what will be marked as Defendant's
15 Exhibit R. Your Honor, this is a photograph of an
16 establishment, a carwash in the City of Bradford, and it
17 depicts one of a number of examples of signs that are subject
18 to regulation under Section 178. This happens to be what's
19 defined as a wall sign within the ordinance. And under the
20 ordinance, as your Honor I'm sure already is aware, there are a

21 multitude of safety-related regulations concerning the
22 stability of mountings, the materials used, incombustibility of
23 materials, the height of placement. The texture of the surface
24 to insure that nails aren't protruding and the like. Here you
25 have an example of why it might be a good idea to regulate this

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1 sign. I just happened to notice that here we have a sign
2 that's erected immediately above the door on a commercial
3 establishment open to the public. The scenario you imagine,
4 after a few hundred or thousand bangs of the door, if not
5 properly designed, the sign comes down and strikes a patron on
6 the head, by way of example.

7 Another sign that is regulated under 178, your
8 Honor, again just randomly selected in the City, would be this
9 mounted sign, street level sign. Here regulations would govern
10 the strength of these mountings, which I am indicating at the
11 moment, how they are mounted into the walkway, the wind load
12 that this sign must sustain in order to be stable. You'll
13 note, of course, that this is adjacent to a public walkway.
14 The reasons for those types of requirements I think are

15 self-evident.

16 Another example, your Honor, here, this is a Country
17 Fair that's just over the line of the Historic District. Here
18 we have another standing sign. Regulations, again, would
19 govern the stability of this structure. Would insure that the
20 electrical wiring for this electrical illuminated sign is
21 properly done, so that people aren't shocked or electrocuted,
22 so you don't have a fire hazard. It would insure that these
23 panels are mounted properly so they can't blow out against the
24 wind and strike a pedestrian. There are regulations within
25 this ordinance which regulate the placement of this sign

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1 relative to visibility of traffic, so it doesn't become an
2 obstruction to cars and others lawfully using the highway.
3 That's Defendant's Exhibit T.

4 And Defendant's Exhibit U, which we'll admit, I want
5 to illustrate the scope of this ordinance. This canopy is
6 defined as a sign within the ordinance. It must meet
7 requirements for snow loads, wind loads, construction of the
8 supports and so on.

9 We have a number of other photographs, your Honor,
10 but that illustrates my point and takes me to the reason why
11 you want to have a permitting system in this situation. The
12 only way to this regulatory structure works, your Honor, and
13 the evidence will show, is if you have a permitting structure.
14 It can't protect the public without it. The City must have
15 notice that the sign is proposed to go up before it goes up, so
16 it can review the plans, the specifications and insure that
17 what is being erected meets safety requirements. Meets the
18 specific criteria set forth in the ordinance. A
19 post-construction inspection doesn't work. Inspectors do not
20 have X-ray vision. Also, it's mere happenstance if they happen
21 to see a sign that's gone up and recognize it as a new sign.
22 That's why we have a requirement that before you put up a
23 non-exempt sign, you go through the permitting process.
24 And further, your Honor, this permitting system is
25 only fair to the applicants. As you can see from the various

1 signs we've illustrated through photographs, signs can range in
2 cost from minimal cost to hundreds of dollars, thousands of

3 dollars, even tens of thousands of dollars. A permitting
4 requirement gives notice to the applicant before they make that
5 investment as to whether their sign is compliant. Otherwise,
6 without the permitting requirement, you have a situation where
7 the sign goes up, the inspector says, sorry, you don't comply
8 with the safety requirements, tear it down. That makes sense,
9 of course, for no one. The permit system insures compliance
10 before the sign is erected, when it really matters, your Honor.

11 Now, that brings me to the plaintiffs' argument, and
12 this was raised during a telephone conference, I've heard it a
13 couple times, I believe it was alluded to here today. It's the
14 proposition that a municipality simply cannot have the
15 permitting system regulating signs on private property. To the
16 extent that is in fact the plaintiffs' position, that's just
17 wrong. The case law is clear and, your Honor, we're prepared
18 to supplement our papers on this. But just to name a few cases
19 that jump out at us where you have comparable permitting
20 systems governing signs on private property, I would reference
21 the court to Lombardo_v._Warner, 353 F.3d, 774, that's a 9th
22 Circuit 2003 case. Long_Island_Board_of_Realtors_v. Massapipwa

23 , a 2nd Circuit 2002 case, 277 F.3d 622. Marathon Outdoor_v._

24 Esconti, 107 F.Supp.2d, 355, that's Southern District of New

25 York.

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1 THE COURT: 365?

2 MR. LANZILLO: I'm sorry, 355, your Honor.

3 THE COURT: All right.

4 MR. LANZILLO: And let me just throw out, I have

5 more, but just way of example, 11th Circuit, Messer_v._City_of

6 Douglasville, 975 F.2d 1505 (11th Cir. 1992). Your Honor, and

7 even reading the cases, you see repeated references in passing

8 to these types of permitting structures. What the plaintiffs

9 are advocating is a rule of law which, if adopted, would

10 invalidate sign regulation across the country. I'm sure the

11 court is well aware of regulations, for example, governing

12 billboards across the country. Those aren't limited to

13 billboards on public property. A permitting system for

14 billboards on public property, obviously, they have to serve

15 their purposes also to apply to private property. The case law

16 illustrates that.

17 The cases simply don't make the critical

18 distinction, public versus private. The test is, your Honor,

19 does the public official have unbridled discretion in issuing

20 the permit. And is there an opportunity for reasonable review

21 of the official's decision, that's the test. And we pass it

22 with respect to each of these ordinances. Chapter 178 has

23 detailed technical requirements, there is no discretion here --

24 THE COURT: Is there aesthetic component to 178?

25 MR. LANZILLO: There is, your Honor, although, I

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1 will say the safety component substantially prevails over

2 others. Safety is a very strong aspect of this. As we go

3 through parts of the ordinance, I think that will be obvious.

4 But aesthetics is also part of the equation. We have those

5 detailed requirements, your Honor. We have judicial review

6 guaranteed under the local agency law.

7 We will show through the evidence a history, an

8 unbroken history of prompt, fair and timely decisions. And no

9 claim of censorship under this ordinance. Your Honor, we'll

10 also show that recently City Council commenced the process to

11 amend this part of the ordinance. This requires a second

12 reading, there was preliminary approval this week --

13 THE COURT: Amended in what respect?

14 MR. LANZILLO: Your Honor, various sections were

15 amended to further buttress this ordinance, which we believe is

16 entirely valid as drafted. But this is an important ordinance

17 to them. And they want to make it as strong as possible and be

18 as fair to the public as possible. To those ends, they have

19 reduced the time limits for decision-makers, as far as how long

20 it takes to grant a permit. And expressly provided that if a

21 permit isn't granted within the prescribed timeframes, the

22 application is deemed approved. They've granted further rights

23 and avenues of review. And, although, these appellate rights

24 have always been there, City Council has passed preliminarily

25 an amendment which sets out in very detailed fashion how to

1 appeal, where to appeal and the timeframes pursuant to which

2 the deciding bodies must act.

3 THE COURT: But in point of fact, if I understand

4 what you're saying, that proposed amended ordinance is not yet

5 the law of Bradford, is that right?

6 MR. LANZILLO: That is correct, your Honor. As a

7 matter of --

8 THE COURT: Because if it was, then what would we be

9 doing here, at least in part, would be mooted by that, is that

10 right?

11 MR. LANZILLO: That's correct, your Honor.

12 Although, it does go to the harm that's allegedly threatened in

13 this case. The only reason those, I cannot represent those

14 ordinances to be in effect is because they require further

15 notice and a second reading. Those are the ordinances that

16 will be applied to these plaintiffs and others. However, and

17 because of that, because we're only looking at a short period

18 of time, I think that is relevant to the case.

19 Your Honor, let me talk a little bit about the

20 Historic District ordinance, if I may. The Historic District

21 in Bradford is only about 5 to 10 percent of the City. Now,

22 the plaintiffs in their submissions stated that the Historic

23 District exists by local designation only. That is absolutely

24 incorrect. Your Honor, the district has been certified on the

25 National Register of Historic Places by the U.S. Department of

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1 the Interior. By the National Parks Service. It's been
2 certified by the Pennsylvania Historical and Museum Commission.

3 In fact, it couldn't exist without these
4 authorizations because there's a statute, the Pennsylvania
5 Historic District Act, which requires it. That Act has been
6 invoked by 71 municipalities across Pennsylvania to create 93
7 Historic Districts. And that Act require that they have an
8 ordinance like the one at issue here. In fact, the ordinance
9 you will be scrutinizing, your Honor, is from a model
10 ordinance. The words chosen by the City of Bradford are
11 verbatim to what comes out of the model ordinance. And from
12 Bedford to West Homestead, this ordinance exists in
13 municipalities across the Commonwealth.

14 THE COURT: Verbatim?

15 MR. LANZILLO: Verbatim or virtually verbatim. Let
16 me put it to you this way, your Honor -- the ordinances are the
17 same in every material respect. A word may change here or
18 there, but you'll see that the operative language that you'll

19 be scrutinizing is the same.

20 THE COURT: So your point being the decision on the
21 constitutional validity or invalidity of 125 has far broader
22 implications than just the City of Bradford?

23 MR. LANZILLO: Your Honor, in part, our point is to
24 dispel any implication that there was discriminatory or
25 censorship motivation here based on the creation of this

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1 ordinance, but in point of fact what you've just stated is
2 absolutely correct. If this ordinance, this section is invalid
3 here, it is presumably invalid in municipalities across the
4 Commonwealth.

5 Your Honor, the HARB board, which we heard so much
6 about, the Historical Architectural Review Board, that exists
7 by virtue of the state law Historic District Act, that's
8 required to exist in such municipality and under the model
9 ordinance. Under that ordinance, our ordinance and state law,
10 this board must have nine members, including a registered
11 architect, a licensed real estate broker, the City Building
12 Inspector and six other individuals knowledgeable concerning

13 historic preservation. In Bradford, for example, the City
14 historian is on the board. A woman who has actually written a
15 book about the Historic District.

16 Now, the standards for the HARB are set out in a
17 multitude of locations, your Honor. Of course, the HARB
18 reviews, whether it's a sign or modification to a facade or a
19 demolition, they review for conformity to the historic context
20 of a building and the area, according to the period of history
21 from which the building is derived. The guidelines are set
22 forth in the ordinance itself. There are general principles,
23 there's specific design guidelines throughout the ordinance.
24 There is also a HARB manual that's provided to the applicant at
25 the time of application, including a checklist of requirements.

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1 And one piece of evidence and guide for HARB review, which is
2 really fascinating, your Honor, is the inventory of every
3 property in the Historic District. Creating this Historic
4 District and putting this regulatory structure in place was not
5 some fly by night operation, it requires thousands of hours and
6 tens of thousands of dollars. And that investment is to assist

7 the board insuring it has suitable guidelines to follow,
8 generated an inventory, which we'll mark as Defendant's Exhibit
9 Z -- this will be hard to see because it's a spreadsheet, your
10 Honor, but this is -- I haven't counted the pages, I'm
11 estimating 20 or more pages of a spreadsheet detailing every
12 property in the Historic District. Providing the name of the
13 building, the function of the building -- historically
14 constituted a current function. The architectural style, from
15 neoclassical revival, to colonial revival, vernacular, art
16 deco, Italianate, all the way through. So as to provide a guide
17 to HARB, the applicant has to have what styles are appropriate
18 for this building. There's additional information regarding
19 the roof, the height, and then a narrative that talks about
20 significant attributes to structures and the characters of the
21 building.

22 There is also, your Honor, a historic paint color
23 guide which must be followed and that is available to everyone.
24 In addition to that, there are the files of other permit
25 applications that were granted to guide the HARB board and

1 applicants. And what you end up with, your Honor, and in part
2 what's being sought through this ordinance are signs and
3 facades, general appearance.

4 Like some of these, Exhibit OO, Defendant's Exhibit
5 OO, which is an example of a sign that has gone through the
6 HARB process to conform to the surrounding style and structure.
7 Exhibit PP, another example. Exhibit QQ, in this case I
8 believe it's a gift shop at a movie store. Here we have
9 pictures of a couple of other signs, both of which were subject
10 to regulation. This one is suspended from the wall. And, of
11 course, the front facade sign, just to show you a few examples
12 for the time being, your Honor.

13 The guidelines are sufficiently definite. There is
14 no unbridled discretion here. And, moreover, your Honor, HARB
15 is subject to very specific requirements and guidelines for
16 decision-making. Under the current version of the ordinance,
17 they must decide within 45 days of the application. You will
18 see, your Honor, through the evidence that the HARB almost
19 invariably decides within a couple of days after the
20 application. The HARB has been a very useful tool for
21 residents for guidance and suggestions concerning these types

22 of developments. They've always been timely. But to make it
23 even better, the amendments that are pending will shorten the
24 time for decision to 30 days, as a deadline and absolute
25 drop-dead date and upon the elapse of that deadline, the

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1 application will be deemed approved.

2 THE COURT: Let me interrupt you. Let me ask you a
3 question about 178. I'm talking about the present ordinance,
4 I'm not talking about this ordinance that they're working on.

5 MR. LANZILLO: Yes, your Honor.

6 THE COURT: Under the present ordinance under 178
7 there is no timeframe, is there, within which a decision must
8 be made on a permit?

9 MR. LANZILLO: Your Honor, I do not believe that
10 ordinance prescribes a specific timeframe. I do believe
11 reading the case law, though, that that is not dispositive.
12 And particularly in a case like this where we would show
13 through the evidence that every decision on every application
14 has not only been timely, but expeditious, within days in most
15 cases. We'll be able to demonstrate that through the

16 plaintiffs.

17 THE COURT: Let me finally interrupt you one more
18 time and ask you this. This is with respect to 125.

19 MR. LANZILLO: Yes, your Honor.

20 THE COURT: Do you have the text of that in front of
21 you?

22 MR. LANZILLO: Yes, your Honor.

23 THE COURT: And I'm speaking now about the
24 plaintiffs' facial challenge to 125, not as applied. The
25 plaintiff says that a fair reading of the face of 125 exempts

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1 from the regulation various types of commercial signage, but
2 does not provide the same exemption to noncommercial signage.
3 What is the City's response to that?

4 MR. LANZILLO: Your Honor, our response is that
5 Section 125-15(E)(1), which is the operative subsection, treats
6 commercial and noncommercial speech exactly the same under the
7 current ordinance. Those signs, first of all, we're not
8 talking about a ban, we're talking about the permitting
9 requirements, and in that particular case I believe the

10 plaintiffs incorrectly came to that conclusion based upon the
11 first sentence, which is the word for word from the model
12 ordinance. It states "no sign or permanent external
13 advertising display of any kind shall be erected, altered,
14 etc., in the Historic District except for advertising,
15 informing the public of a service, business, occupation or
16 profession carried on, in or about the property on which such
17 sign or permanent external advertising is displayed." The
18 operative part of that sentence, the point of that sentence,
19 your Honor, is the on-site versus off-site distinction, which,
20 as the court well knows, is entirely permissible under Rappa

21 and the controlling Supreme Court case law. The potential
22 problem with that sentence, the potential for a confusion
23 arises, obviously, from the words service, business,
24 occupation, or profession carried on, in or about the property.

25 THE COURT: They all suggest a commercial activity,

21

1 don't they?

2 MR. LANZILLO: Your Honor, if you take the literal
3 definition of the term service, they don't. In fact, I have it

4 here, the Oxford English language dictionary specifies service
5 as including the espousing of a position as being a public
6 service. I can tell you this, your Honor. That was never the
7 intent of that sentence and it has never been the application
8 of that sentence. And, in fact, when you look at the
9 plaintiffs' citations, you will see they were cited solely for
10 failing to go through the HARB review process, the citations
11 had nothing whatsoever to do with the commercial or
12 noncommercial nature of the signs. If, in fact, we were
13 interpreting the sentence the way the plaintiffs' fear, the
14 citations would have been for failing to go through HARB -- it
15 wouldn't be for failure to go through HARB, because HARB
16 wouldn't apply at all, it would be posting a noncommercial
17 sign.

18 Your Honor, just as an aside, I understand that
19 we're here on the extent ordinance, but I want you to know that
20 City Council wants their to be no ambiguity or confession, so
21 they have amended this section of the ordinance, specified the
22 word no commercial sign and, in fact, instituted a general
23 exemption for noncommercial signage similar to under Section
24 178, as an aside, your Honor.

25 THE COURT: When are these new ordinances, when do

22

1 they legally become effective and supersede the ordinances that
2 we are here on today on the injunction hearing?

3 MR. LANZILLO: Your Honor, Mark Hollenbeck is the
4 solicitor for the City of Bradford, may I consult with him to
5 make sure my answer is accurate?

6 THE COURT: All right.

7 (Discussion held off the record.)

8 MR. LANZILLO: With advertising requirements, these
9 will be before Council on Tuesday, May 11th, for final
10 approval.

11 THE COURT: And are you saying, assuming, if final
12 approval is given on the 11th, as of the 11th they become the
13 new ordinance?

14 MR. HOLLENBECK: May I speak directly, your Honor?

15 THE COURT: Sure.

16 MR. HOLLENBECK: Yes, the Third Class City Code says
17 that they're valid within 10 days of the passage unless
18 otherwise provided. As drafted, it reads they'll be valid upon

19 passage, which will be May 11th.

20 THE COURT: All right. Let's wrap it up then, Mr.

21 Lanzillo, then we'll start to take some testimony.

22 MR. LANZILLO: Yes, your Honor. Finally, a brief

23 word the exemptions under 178. Your Honor, these are

24 exemptions tied directly to the purpose of the property. There

25 are substantial and even compelling reasons for each. They are

23

1 treated as content-neutral under Rappa. The Supreme Court's

2 decision in Lorillard_Tobacco, Taxpayers_For_Vincent, there is

3 no problem with those exemptions under Section 178.

4 And, finally, your Honor, there simply will be no

5 evidence in this proceeding of any content-based attempt to

6 regulate speech or any attempt at censorship. What the

7 plaintiffs are proposing is a regulatory structure, which will

8 put the public at risk. If these, particularly under 178, this

9 permitting structure is struck down, as illustrated by the

10 photographs we have here, we will have a situation that

11 promotes danger to the public. Also, to strike down Chapter

12 125 would be a frustration of the efforts of cities across the

13 Commonwealth and I think actually across the country, to try to

14 save and revitalize their cities, to stem the decay that

15 infected many, that's decay that Bradford has had a great deal

16 of success in turning around. We hope the court will take into

17 consideration the public interest.

18 THE COURT: All right, call your first witness.

19 MR. LANZILLO: John Peterson.

20 THE COURT: Mr. Peterson, would you be so kind as to

21 step up here in front of my clerk and she'll swear you in.

22 THE WITNESS: Sure

23 THE CLERK: Please state your name for the record,

24 sir?

25 THE WITNESS: John Peterson.

24

1 JOHN PETERSON, DEFENSE WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. LANZILLO:

4 Q. Mr. Peterson, would you state your name and address for

5 the record?

6 A. John William Peterson.

7 Q. How are you employed?

8 A. I'm employed as the City Clerk and administrative

9 assistant to City Council for the City of Bradford. I also

10 serve as the City's Zoning Officer and Health Officer for the

11 City of Bradford.

12 Q. How long have you been employed by the City of Bradford?

13 A. Thirty-two years.

14 Q. Could you briefly describe for the court your employment

15 history with the City?

16 A. I began with the Bradford Fire Department in 1972.

17 Worked my way up through the ranks through the department to

18 the rank of Chief, which I obtained in 1995.

19 THE COURT: Mr. Peterson, pull in just a little bit

20 and speak into the microphone.

21 THE WITNESS: In 1995 I was appointed Chief of the

22 department. Assumed the duties of Building Inspector as well

23 at that point. I was appointed Zoning Officer, acting Zoning

24 Officer for the City upon an illness of the Zoning Officer at

25 the time. Upon his passing, I was named Zoning Officer for the

1 City of Bradford in 1996. In 2000 I was appointed as City
2 Clerk and administrative assistant to City Council, which is
3 the position I currently hold.

4 BY MR. LANZILLO:

5 Q. Now, with respect to the positions that you held with the
6 City, have you had responsibility concerning the implementation
7 or enforcement of the two sign ordinances at issue in this
8 case?

9 A. Yes, I have.

10 Q. And that would include responsibilities as a member of
11 the HARB board itself?

12 A. Yes, I also served, in the duties as Building Inspector
13 from 1995 through 2000, I also was a member of the HARB board,
14 and attended meetings and reviewed applications under the HARB
15 process.

16 Q. And, of course, as Building Inspector or as Zoning
17 Officer, you would have had responsibility with respect to
18 these ordinances?

19 A. To the ordinances, also to the review of the applications
20 that came in for signage.

21 Q. I'd like to begin by discussing Chapter 178 with you,

22 would it be fair to describe that as the general sign ordinance

23 in the City of Bradford?

24 A. That's correct.

25 Q. And a question I believe the court raised during the

26

1 opening statements here is whether this would apply throughout

2 the City, including the Historic District?

3 A. Yes, it would.

4 Q. Very good. Now, I understand that under Section 178-3,

5 which discusses permitting requirements -- your Honor, may I

6 present the witness with a copy of the exhibit?

7 THE COURT: Yes.

8 MR. LANZILLO: For the record, your Honor, this will

9 be Exhibit Q, Defendant's Exhibit Q.

10 BY MR. LANZILLO:

11 Q. And, Mr. Peterson, you should feel free to refer to any

12 part of the ordinance that you need to. Now, as I understand,

13 under Section 178-3, which talks about permitting requirements,

14 this applies to, in the words of the ordinance, any sign that's

15 out of doors?

16 A. That's correct.

17 Q. All right. Are signs which are displayed through a

18 window or through a door from the interior of a structure

19 covered by this ordinance?

20 A. The City takes no jurisdiction over signs in the interior

21 of buildings.

22 Q. Now, I believe I'm correct that under Section 178-2,

23 there are various types of signs defined therein?

24 A. Yes, there is.

25 Q. Could you briefly outline to the court the main

27

1 categories of signs that are regulated under this ordinance?

2 A. The ordinance regulates every sign, billboard, ground

3 sign, wall sign, roof sign, illuminated sign, projecting sign,

4 temporary signs, marquees, awnings, canopies and street clocks.

5 Q. Those are all defined terms within the ordinance?

6 A. Yes, they are.

7 Q. Now, am I correct that there are nine exemptions under

8 the ordinance under 178-15? Your Honor, would you like a copy

9 of the ordinance?

10 THE COURT: I have it in front of me, thank you.

11 THE WITNESS: Yes, there are.

12 BY MR. LANZILLO:

13 Q. We've already talked about the fact that the window and
14 door signs are not covered, why is that?

15 A. Why is --

16 Q. Why are the window and door signs not covered?

17 A. Signs within the interior of a building?

18 Q. Yes.

19 A. There's not the danger to the general public on signs of
20 that type. To pedestrians, to motorists, that occur with
21 exterior signs.

22 Q. We'll talk about the exemption under 178-15 in a moment,
23 but flip now to Section 178-4, which refers to the application
24 for a permit. What I'd like you to do, Mr. Peterson, is walk
25 through the various items of information required under that

28

1 section and tell us why each piece of information is requested?

2 THE COURT: Mr. Lanzillo, let me make a suggestion.

3 Why don't you put, as you're going through these various

4 sections, why don't you put them on the overhead.

5 MR. LANZILLO: Yes, your Honor.

6 BY MR. LANZILLO:

7 Q. Can you read that okay, Mr. Peterson, on the screen?

8 A. Yes, I can.

9 Q. Do you see here under 178-4, first item of information,
10 name, address and telephone number of the applicant; why is
11 that required?

12 A. It's required so the City can document where the sign is
13 located. The person making the application for the sign, a
14 telephone number is helpful if there's a question concerning
15 the application permit.

16 Q. Obviously, if they had to communicate with the applicant?

17 A. Correct.

18 Q. Location of the building, structure or lot to which or
19 upon which the sign is going to be located or erected, right?

20 A. Again, that's to determine where this is, our records are
21 computerized so this data is entered into the computer system
22 so the signs can now be tracked. It also tells us what zoning
23 district in the City that the sign is located in. And in the
24 case of the Historic District, obviously, it would tell us if

25 this sign or proposed sign would be located within the Historic

29

1 District.

2 Q. Subsection (C), "the position of the sign or other

3 advertising structure in relation to nearby buildings or

4 structures;" why do you need to know that?

5 A. There are requirements for signs not to be placed in the

6 public right-of-way. This is important, there is a site plan

7 furnished usually with the sign application showing exactly

8 where the sign is located. In the event, say, of roof signs,

9 there are setback requirements for a roof sign, in case it does

10 fail in a severe windstorm or something, the roof sign won't

11 fall off the top of the roof and endanger the public below it.

12 So there's some setback requirements. So this information is

13 important, positioning of the sign is important and

14 determination, also.

15 Q. Things like obstructing the public right-of-way?

16 A. Correct.

17 Q. Among others. Now, the next requirement is "the

18 application be accompanied by two blueprints or ink drawings of

19 the plans and specifications and method of construction and

20 attachment to the building or in the ground;" why is that

21 required?

22 A. This is to insure that the sign will withstand all --

23 that the sign is designed according to standards that are set

24 by sign industries. Also, that the anchoring of the sign into

25 the ground, to the building, to the rooftop, whatever, is

30

1 adequately sufficient. So it, again, danger to the public, the

2 general safety are the riding forces in this. Also, with large

3 signs which take into effect a canopy, very critical factors,

4 including wind load and snow load and stress factors on that,

5 and we review those for certification, stamp drawings from an

6 engineer in cases of these larger signs.

7 Q. Those specific requirements that you're describing, that

8 you reviewed for compliance, those are set forth in other parts

9 of the ordinance?

10 A. Yes, they are.

11 Q. The next subsection requires "submission of copies of

12 stress sheets and calculations showing that the structure is

13 designed for dead load and wind load pressure in any direction

14 in the amount required by this chapter and all other laws and

15 ordinances of the City;" why is that required?

16 A. Again, due to the wind loads and snow loads, and the

17 stress placed upon these signs, that's of critical importance.

18 As with Erie or the City of Bradford, there are designated wind

19 loads, snow loads for municipalities throughout the

20 Commonwealth, throughout the country, set by national agencies

21 and recognized by makers of signs in the sign industry. And

22 very often that's the first process -- a sign installer will

23 call the City of Bradford for the snow load and wind load.

24 Q. The next requirement "is the name of the person, firm,

25 corporation or association erecting the structure;" why do you

31

1 want to know that?

2 A. Again, this is for contact purposes. Oftentimes the sign

3 installer will be the person acting to secure the permit. We

4 get calls from Cicogna here in Erie, people in Ashtabula, Ohio.

5 Some of your larger sign installers that work on bigger

6 projects. Again, that's critical for us to make contact if

7 there's a question. Also, any company doing business within

8 the City of Bradford is required to have a copy of their

9 liability insurance policy on record with the City. And, of

10 course, if that has lapsed or whatever, we need to be able to

11 contact these people.

12 Q. Subsection (G), "written consent of the owner of the

13 building;" why is that required?

14 A. That's to prevent somebody from putting a sign up on a

15 building that they don't own. If they have the ownership, we

16 ask that it be in writing from the owner of the building

17 stating they have no objection to their placing the sign on the

18 property.

19 Q. So there is a consent requirement to avoid a trespass on

20 the property?

21 A. Correct.

22 Q. Electrical permit, if any, for the sign?

23 A. Illuminated signs pose their own dangers, they are

24 required to be installed in full compliance with the

25 International Electric Code. The signs themselves have to have

1 Underwriter's Laboratory approval for internal wiring to the
2 sign and the work of any illuminated sign, the ultimate hookup
3 of that sign has to be approved.

4 Q. And is the concern there to avoid electrical shock and
5 fire hazard?

6 A. Yes, it is.

7 Q. The next item, is insurance policy or bond required by
8 Section 178-16, let's defer on that until we get to that
9 section and talk about it in detail. And, finally, obviously,
10 there are other ordinances in the City of Bradford which may
11 regulate these structures, is that correct?

12 A. Yes, there are.

13 Q. And the final section of the required items for the
14 application require such other information as the Building
15 Inspector shall require to show full compliance with this
16 chapter and all other laws and ordinances of the City; why is
17 that required?

18 A. We require, in the instance of signage that would be
19 installed within the HARB district, obviously, the Building
20 Inspector needs to be aware of applications in process or has
21 been approved by HARB. Any other general information that
22 might be required for the inspector to make a decision

23 concerning a sign.

24 Q. For example, if it is unclear whether the sign will be

25 structurally sound, the inspector could request additional

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1 engineering information or structural information?

2 A. Exactly. If the original data submitted with the

3 application was non-sufficient, could ask for additional

4 information.

5 Q. Section 178-5 talks about illuminated signs and approval

6 of the Electrical Inspector. Actually, you touched upon this

7 earlier, could you tell the court why this section of the Code

8 exists?

9 A. Electric poses the second biggest danger with a sign,

10 probably only superseded by proper anchorage and installation

11 itself. But the inherent dangers of electricity are well-known

12 and this insures that the sign is installed to the most recent

13 Code enacted by the International Codes Council.

14 Q. Under Section 178-6 it provides the instruction that if

15 it shall appear that the proposed structure is in compliance

16 with all the requirements of this chapter and all other laws

17 and ordinances of the City of Bradford, the Building Inspector,
18 shall then issue the erection permit. Does the Building
19 Inspector have any discretion to deny the permit where these
20 requirements are satisfied?
21 A. No, he would not.
22 Q. I don't recall seeing an expressed deadline for the
23 timeframe for the Building Inspector to issue the permit.
24 First of all, is that correct, I didn't see that in this
25 ordinance, I believe it's in the HARB?

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1 A. No, there's not one in this ordinance.
2 Q. Let me ask you as a matter of practice, how long does it
3 typically take the Building Inspector to decide an application
4 after submission of the required materials?
5 A. I would say normal practice, there would be a turnaround
6 within three to five days. Unless it's a very complicated
7 situation and you may be asking for additional information.
8 Q. Have you ever received a complaint that it's taking an
9 undue amount of time for the Building Inspector to review and
10 issue a decision on a sign permit?

11 A. No, I have not.

12 Q. Section 178-7 discusses permit fees. Before I get into
13 the substance of that, let's cover a little background as to
14 how these codifications work. I take it that an ordinance is
15 passed by City Council and then sent to a printer for
16 codification?

17 A. That is correct.

18 Q. Are things sometimes lost in translation?

19 A. Yes, they are.

20 Q. Is the codification we're looking at consistent with the
21 actual ordinance or law of the City of Bradford?

22 A. No, it is not.

23 Q. Could you tell the court what's wrong with the printed
24 material?

25 A. I can't remember the exact year, I believe it was 1998,

1 the City amended this ordinance to take out the language for
2 annual permitting of signs. That was done by Council, the
3 ordinance passed on the second and final reading, sent to the
4 codifiers for inclusion into our code book. The word annual in

5 178-7(A), the word annual permit fee --

6 Q. Mr. Peterson, I'm being unfair to you, I'm making you

7 recall what is set forth in writing. Let me show you what

8 we've marked as Defendant's Exhibit V, as in Victor, and tell

9 me if this is a copy of the ordinance changing the fee

10 structure to which you're referring?

11 A. Could I see the bottom with the signatures on it, please.

12 Yes, that would be the City Clerk at the time this ordinance

13 was passed and the Mayor at the time this ordinance was adopted

14 by the City.

15 Q. Picking up with what you were just telling the court,

16 then, as I understand it, the amended ordinance which is the

17 law of the City of Bradford, there is no annual fee, there is

18 no annual renewal requirement?

19 A. That is correct.

20 Q. And that would leave only a one time fee which is

21 typically in the amount of \$20?

22 A. That's correct.

23 Q. In some instances it's \$20 or two percent of cost?

24 A. Correct.

25 Q. And the reason why the codification is not consistent

1 with the actual ordinance is the printer made a mistake?

2 A. That's correct. And when I reviewed this ordinance, the
3 general publishers, who is are codifier, was notified and this
4 will be corrected.

5 THE COURT: Mr. Lanzillo, let me interrupt you, if I
6 could. Mr. Peterson, if you recall, why was the requirement of
7 an annual fee deleted?

8 THE WITNESS: Your Honor, I believe at that time,
9 I wasn't involved with Council as I now am, that was during my
10 time as Fire Chief, but I believe one of the discussions
11 involved around the fact that the City was not collecting an
12 annual fee anyway. The City was not collecting an annual fee
13 anyway on signs and, therefore, that could be deleted.

14 BY MR. LANZILLO:

15 Q. In fact, Mr. Peterson, the City has not been collecting
16 an annual fee since 1998 and apparently before that?

17 A. Definitely not since '98, and to the best of my knowledge
18 they were not collecting it before.

19 Q. With respect to the fee structure that is in place, could

20 you explain to the court its purpose?

21 A. The fee structure partially defrays the cost of
22 examination, the review process for the signage. Helps defray
23 those costs. There's also on-site inspections performed by a
24 Code Enforcement official, who also would serve as Building
25 Inspector. Depending on the size of the sign, the type of sign

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1 it may be, this may require two or three visits to the site by
2 the Code Inspector. So, obviously, the \$20 amount will not
3 take in the whole cost of the permitting process for the City,
4 but it does defray a portion of the costs.

5 Q. When you talk about Code Enforcement officers and their
6 responsibilities, what are we looking at as far as, it may vary
7 from person to person, but as an average cost to maintain that
8 employee?

9 A. I'd say with salary and benefits, in excess of \$20 per
10 hour.

11 MR. LANZILLO: Your Honor, I'd move the admission of
12 Defendant's Exhibit V.

13 MR. FRIEDMAN: No objection.

14 THE COURT: It's admitted.

15 BY MR. LANZILLO:

16 Q. Section 178-10 addresses the subject of unsafe and
17 unlawful signs. I'll put that on the screen. Could you tell
18 the court the purpose of that section?

19 A. This section reads that "if the Building Inspector shall
20 find that any sign or other advertising structure regulated
21 herein as unsafe or insecure or is a menace to the public or
22 has been constructed or erected or is being maintained in
23 violation of the provisions of this chapter, he will give
24 written notice to the permittee thereof. If the permittee
25 fails to remove or alter the structure so as to comply with the

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1 standards set forth within 10 days after such notice, such sign
2 or other advertising structure may be removed or altered to
3 comply by the Building Inspector at the expense of the
4 permittee or owner of the property upon which it is located.
5 The Building Inspector shall refuse to issue a permit to any
6 permittee or owner or refuses to pay costs so assessed. The
7 Building Inspector may cause any sign or other advertising

8 structure which is an immediate peril to persons or property to
9 be removed summarily and without notice." The safety of the
10 public is the driving force behind this regulation. Every sign
11 located within the City of Bradford has the potential to be a
12 safety concern for someone. A customer entering a store front,
13 motorists passing by a ground sign. Someone getting gasoline
14 as a convenience store, underneath that canopy all deserve and
15 expect the right that's not going to fall on them causing
16 injury or death. The very last sentence gives the Building
17 Inspector the right -- say a sign was damaged in a motor
18 vehicle accident, and one of the support structures holding
19 that support, if it maybe had two supporting structures, was
20 damaged, severed, whatever, and the sign was just hanging
21 there. Which, obviously, is an immediate danger. That gives
22 the Building Inspector the right, if there is an immediate
23 peril, to have that sign removed without notice. Short of
24 that, the Building Inspector has a process where he goes to the
25 permittee and asks them to bring the sign into compliance

1 within 10 days.

2 Q. And that involves notice and an opportunity to correct

3 the problem?

4 A. Yes, it does.

5 Q. Section 178-11 refers to notation of permit number, date

6 and voltage with respect to signs within the ordinance. Could

7 you explain to the court the purpose of that particular

8 provision and how it's applied within the City of Bradford?

9 A. This ordinance is an ordinance that is approaching

10 30-years-old. In the early days it was critical for an

11 inspector to know the date that the sign was erected. And,

12 obviously, to go through without that information being printed

13 on the sign, to go through years and years of sign permits,

14 building permits that have been issued by the City of Bradford,

15 that could become very time consuming. So that was a quick

16 reference during that period of time. We have --

17 Q. I don't mean to interrupt you, but I take it at the time

18 this ordinance was adopted, for most of its life, you were

19 working with a paper based system record keeping?

20 A. That's correct.

21 Q. I'm sorry, please continue.

22 A. In the early '90s, mid '90s we computerized our systems.

23 Now by the information contained we can access the data on the

24 sign through the property owner, through the address, physical
25 street number, whatever, and have that information available to

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1 the Building Inspector immediately. There's less need for this
2 requirement today, to be quite honest, I'm not sure that all
3 signs today carry this notation of when it was, if it's painted
4 on that, when it was erected, and it's not as critical today as
5 it was in the past. Because we do have that data available
6 immediately to an inspector. The electrical requirements are
7 still there. Any sign that is illuminated carries a UL label
8 permanently attached to that sign and that would state the
9 voltage.

10 Q. Section 178-12 refers to painting certain portions or
11 components of the signs every two years. Do you see that --
12 that refers to painting at least once every two years all parts
13 and supports of said sign unless the same are galvanized or
14 otherwise treated to prevent rust. Could you tell the court
15 the purpose of that requirement?

16 A. On the face of this section it would appear that there's
17 some aesthetic content to this. When you read into it, where

18 it states that the parts and supports of the sign are required
19 to be painted. We're talking about the metal parts and
20 components of the sign. The pieces that anchor the sign into
21 the ground, onto a wall or whatever, that these be painted and
22 properly rust proofed to prevent corrosion, deterioration of
23 those critical elements, particularly given the nature of our
24 seasons.

25 Q. Section 178-13 has specific requirements for wind

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1 pressure and dead load requirements, let me put those on the
2 screen. Refers to signs being designed and constructed to
3 withstand a wind pressure of not less than 40 pounds per square
4 foot of area. And be constructed to receive dead loads as
5 required in the Building Code or other ordinances of the City
6 of Bradford. I think you explained this earlier, would you
7 just touch upon the safety purpose there?

8 A. Any sign must be able to withstand what has been
9 designated by National Code Council as the wind requirements
10 and the snow load for the City of Bradford. If not, structural
11 failure could occur.

12 Q. Let me refer you to Section 178-16, which discusses the
13 bond or insurance requirements.

14 THE COURT: We're going to take a short break, Mr.
15 Lanzillo.

16 MR. LANZILLO: Yes, your Honor.

17 (Recess from 11:10 a.m.; until 11:20 a.m.)

18 THE COURT: All right, Mr. Lanzillo.

19 MR. LANZILLO: Thank you, your Honor.

20 BY MR. LANZILLO:

21 Q. Mr. Peterson, before the break we were about to take a
22 look at the requirement for a bond in the ordinance, which is
23 under 178-16. This provides "every applicant for a permit
24 referred to herein shall, before the permit is granted, file
25 with the Building Inspector a continuing bond in the penal sum

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1 of \$10,000 executed by the applicant and a surety company to be
2 approved by the City Solicitor." It goes on to provide that "a
3 liability insurance policy issued by an insurance company
4 authorized to do business in the Commonwealth of Pennsylvania
5 conforming to this section may be permitted in lieu of a bond."

6 First of all, could you tell the court what the purpose of this
7 provision is?

8 A. This is liability protection for both the public as well
9 as for the City of Bradford.

10 Q. Now, there's discussion here about a bond for an
11 insurance policy, could you tell the court the typical or
12 common practice of late with respect to this requirement?

13 A. Once again, I think this shows the age of this ordinance.
14 Bonds were common, I believe probably in the early stages of
15 time back in the '70s, when this ordinance was enacted. Today
16 I have no bonds on record for a sign. We only have liability
17 insurance policies issued by their insurers. And this is
18 nothing more than an insurance rider specifying that they have
19 insurance on their sign on their property, as well as the
20 structure itself.

21 Q. What is your understanding concerning the difficulty of
22 obtaining an insurance rider of \$10,000 in coverage?

23 A. Very often when an insurance company is notified by their
24 policyholder, we receive a faxed copy of the insurance binder
25 the same day.

1 Q. Has anyone complained about that requirement?

2 A. No, they have not.

3 Q. In the interest of time, I'd like to go through a number

4 of what are -- I don't believe anyone would object to the

5 characterization as clearly safety-related requirements under a

6 series of sections here. Section 178-17 through Section

7 178-30.

8 MR. FRIEDMAN: Your Honor, we have not challenged

9 any of these safety-related criteria.

10 MR. LANZILLO: Well, they challenged the local

11 permitting scheme. This is fundamental and material to why we

12 have the permitting scheme.

13 THE COURT: What were you referencing, 178 through

14 what?

15 MR. LANZILLO: 178-17 through 178-30.

16 THE COURT: Let me just look at them.

17 MR. LANZILLO: Let me, if I may, your Honor -- while

18 your Honor appears to be reading them.

19 THE COURT: Go ahead, I'm listening to you.

20 MR. LANZILLO: I just picked out a couple of

21 examples here, your Honor, and once the document is in
22 evidence, I suppose we can debate whether the rest of these
23 have a safety or aesthetic related purpose. I would like to
24 point out a couple less obvious ones. Your Honor, I would add
25 to that, that this goes directly to the criteria that is

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1 applied in deciding whether to issue a permit. This is what
2 guides the decision-making process. If you check off these
3 requirements and you satisfy them, the Building Inspector must
4 grant the permit.

5 THE COURT: Well, first of all, from an evidentiary
6 standpoint, get it on the record one way or the other, you can
7 argue your implications and plaintiffs can argue theirs.

8 BY MR. LANZILLO:

9 Q. Mr. Peterson, let's go through these in a fairly summary
10 fashion. Section 178-17 deals with obstructions to doors,
11 windows or fire escapes. The section prescribes those types of
12 obstructions, briefly why?

13 A. So means of egress or ingress into a building is not
14 obstructed or blocked in the event of fire, other catastrophe

15 that may occur. Obviously, you attach it to a stand pipe,
16 which is a component used by the fire department in fighting
17 fires in the building that would not want to be hampered by a
18 sign. Someone may place it on it -- nor would the functioning
19 working mechanisms of a fire escape want to be hampered by a
20 sign that may be placed upon it.

21 Q. Section 178-18 talks about not putting up signs in a
22 manner as to obstruct free and clear vision or at any location
23 where, by reason of the position, shape or color, it may
24 interfere with, obstruct the view of or be confused with any
25 authorized traffic sign, signal or device or shall make use of

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1 the words stop, look, drive-in, danger or other similar phrase.
2 Why is that prescription included in the ordinance?
3 A. This basically is for protection of the motoring public,
4 as well as pedestrians that may be in areas where they would
5 have danger from a motorist not being able to see them due to a
6 sign that would block the vision of the motorist. And this is
7 actually the only section where there are specific words that
8 are not allowed within this ordinance.

9 Q. Why don't you want a sign in a certain location with the

10 words stop or other directive language, such as that referred

11 to in the ordinance?

12 A. Obviously, if it's not where there's a stop sign and

13 somebody sees a sign that says stop, it may cause confusion,

14 they may decide to stop right there and it could be a potential

15 for an incident to occur.

16 Q. Section 178-19 talks about sign face texture, what's the

17 purpose of that provision?

18 A. That's for protection of the public safety issues again,

19 that there's no nails, tacks or wire that could cause a problem

20 with anyone.

21 Q. Section 178-21, by way of example, talks about spotlights

22 and floodlights being prohibited, why?

23 A. This section actually does not have spotlights and/or

24 floodlights on public property. Again, that could be for the

25 protection from hazards to pedestrians, safety concerns, could

1 cause visibility issues. That's why the use of loose neck

2 reflector type lights are allowed in another section.

3 Q. Section 178-22 includes a prohibition of obscene matter

4 as that term is interpreted from time to time under either the

5 federal case law or the case law of this Commonwealth. Let me

6 ask you first, has that provision been amended in recent years?

7 A. That was amended in 2002.

8 Q. At whose request?

9 A. The ACLU.

10 Q. And what was added, do you know?

11 A. Excuse me.

12 Q. Do you know what part of that was amended, what words

13 were added?

14 A. I believe the language under the federal case law and the

15 case law of this Commonwealth was what was amended.

16 Q. Does it make it clear that obscene was to be interpreted

17 in light of that case law?

18 A. I don't believe that language is in the former ordinance.

19 Q. Section 178-23 talks about ground signs and has a series

20 of specific safety requirements for those types of signs?

21 A. Yes, it does.

22 Q. Including requirements relating to bracing, anchorage and

23 supports, correct?

24 A. Yes. It covers the construction, sign construction, the

25 sign location, the actual erection methods for the sign. The

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1 supports. Again, the sign must meet requirements and it

2 actually addresses the site of the sign once the sign's

3 installed.

4 Q. Now, I'm not going to go through each one of these, in

5 summary form there is a section dealing with wall signs,

6 Section 178-24?

7 A. Yes.

8 Q. Am I correct that what this ordinance attempts to do is

9 address the particular safety concerns that arise from

10 different styles of signs categorically?

11 A. Yes, it does.

12 Q. So we have wall signs -- roof signs, projecting signs,

13 correct?

14 A. That's correct.

15 Q. Under Section 178-26, what is a projecting sign?

16 A. A sign that projects outward from the face of a building,

17 as opposed to a wall sign that's attached flat to a building,

18 the projecting sign projects out. Oftentimes over a public

19 right-of-way, sidewalk, street, whatever. So it has its unique
20 set of characteristics for the installation of that type of
21 sign. And, obviously, there's more of a danger to pedestrians
22 and to the general public from a projecting sign probably than
23 any other sign.

24 Q. The section dealing with temporary signs is Section
25 178-27, correct?

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1 A. Yes.

2 Q. Again, the structure of these requirements typically
3 focus on three elements it appears, construction, location and
4 erection?

5 A. That's correct.

6 Q. Am I correct Section 178-28 addresses the construction,
7 location and erection concerns relative to the safety of
8 marquees?

9 A. Yes, it does.

10 Q. Section 178-29 addresses those same concerns regarding
11 awnings and canopies?

12 A. Yes, it does.

13 Q. Finally, Section 178-30 addresses those considerations
14 regarding street clocks, correct?

15 A. Yes, all of them.

16 MR. LANZILLO: Your Honor, as a matter of
17 housekeeping, if I may digress and offer something to the
18 court. During our opening remarks you had asked me about the
19 lack of specified time limit for a decision under Chapter 178.

20 I would like to offer to the court a couple of citations.

21 There are others, but these were handy. In these two cases the
22 court found that lack of a time limit did not invalidate the
23 ordinance. That's Lombardo_v._Warner, which I mentioned

24 earlier, 353 F.3d 774 (9th Cir. 2003). Also, Outdoor_Systems

25 v._Mesa, 997 F.2d 604 (9th Cir. 1993). And, your Honor, also

1 just to add some additional authority with respect to another
2 question you raised regarding the possibility of interpreting
3 the first sentence of the historic ordinance as precluding
4 noncommercial speech. The case holding that on-site signs

5 include noncommercial speech because noncommercial speech is

6 situated wherever the speaker places it. The citation for that

7 is On-site_Advertising_v._Seattle, and this is in the Federal

8 Appendix, 36 F.A. 332 (9th Cir. 2002). And I believe it cites

9 other cases. Thank you, your Honor.

10 BY MR. LANZILLO:

11 Q. Mr. Peterson, let's talk about the exemptions of the

12 ordinance. This is Section 178-15. Let's just briefly review

13 them. "Real estate signs not exceeding eight square feet in

14 area which advertise the sale, rental or lease of the premises

15 upon which said signs are located only." Why is that exempt --

16 by the way, let me step back. These signs are exempt from what

17 under the ordinance, under this section?

18 A. They're exempt from every part of this ordinance except

19 for 178-10. Which is the safety section of the sign ordinance.

20 Q. So these signs would not be subject to permitting?

21 A. Correct.

22 Q. These signs would not be subject to the bond or insurance

23 requirement?

24 A. Correct.

25 Q. Or the fee requirement?

1 A. Correct.

2 Q. Am I also correct that this ordinance doesn't ban
3 anything, it simply creates a permitting structure?

4 A. That would be correct.

5 Q. These exemptions are really exemptions to the permitting,
6 correct?

7 A. Yes.

8 Q. All right. Why does that first exemption with respect to
9 real estate signs exist?

10 A. These signs are very temporary in nature. They are
11 traditionally normally placed in the ground. The size of the
12 sign usually never exceeds eight square feet. Signs are
13 usually extremely well maintained by the real estate broker
14 handling the sale of the house. They're well painted, well
15 maintained. They're not a detraction in any way to the
16 neighborhood. From a safety issue, the size of a sign being
17 placed into the ground, obviously, is not as great as safety
18 concern as to a different type of sign.

19 Q. Let me ask you, these real estate signs, are they

20 typically an industry standard in terms of size and

21 construction?

22 A. I would assume they are. Almost all of them appear to be

23 approximately the same size, and not writing this ordinance,

24 I'm not sure, but I would assume -- some measurements may have

25 been taken at that time.

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1 Q. As far as the existence of any problems in the past with

2 Coldwell Banker or another realtor erecting shoddy or unsightly

3 signs, has that been an issue over the years?

4 A. No, it has not.

5 Q. And this is a requirement that or an exemption that

6 applies only to signs dealing with the specific property where

7 a sign is located, is that correct?

8 A. Yes.

9 Q. Subsection (B), "professional nameplates not exceeding

10 one square foot in area." Why are these signs exempt from

11 permitting?

12 A. This would be an extremely small sign and may be affixed

13 to a wall structure that may house say a dentist, an attorney,

14 along those lines. And, again, due to the size of the sign and

15 usually they're installed on private property, I would say

16 probably were deemed not to be any type of a safety hazard.

17 Q. Typically we're talking about a nameplate?

18 A. Correct.

19 Q. I believe there's another similar exemption for

20 occupational signs denoting only the name and profession of an

21 occupant in a commercial building, public institutional

22 building or dwelling house and not exceeding two square feet in

23 area?

24 A. That is correct.

25 Q. Same rationale?

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1 A. I would assume that the rationale is the same when they

2 exempted these, this does allow a little bit bigger sign for

3 those, where it is an occupation as well.

4 Q. There's a practicality aspect here in terms of allowing

5 adequate space to have the basic information?

6 A. Yes.

7 Q. Now, there's an exemption for signs painted on the

8 exterior surface of a building. What's the rationale for

9 exempting that from permitting?

10 A. Obviously, there's no danger to the public if a sign is
11 painted on a structure. The only areas where that would come
12 into question would be something painted on the exterior of a
13 building within the HARB district.

14 THE COURT: In other words, you could have a sign
15 painted on a building outside the HARB district that was
16 aesthetically awful, but it would be beyond the reach of the
17 ordinance, is that right?

18 THE WITNESS: Correct.

19 THE COURT: All right.

20 BY MR. LANZILLO:

21 Q. Let me, if I may, clarify that, though. When the court
22 refers to beyond the reach of the ordinance, would it be beyond
23 the reach of the entire ordinance; I don't mean to split hairs
24 here too much, but I suppose if you found out that it was
25 painted with some toxic material, these exemptions only apply

1 to the permitting requirements, the unsafe sign requirement

2 applies to all signs?

3 A. Yes.

4 THE COURT: My question was aesthetics, it wasn't

5 safety.

6 THE WITNESS: These signs would come under

7 requirements of 178-24, if they did have raised borders,

8 letters, characters, declarations or lighting.

9 BY MR. LANZILLO:

10 Q. "Signs denoting the architect, engineer or contractor

11 when placed upon work under construction and not exceeding 16

12 square feet in area;" that's exemption (E), that's that about?

13 A. Those signs are traditionally erected where a

14 construction project is going on. It may be a home improvement

15 contractor, it may be a federal project that requires that the

16 names of those people be posted on the property. It obviously

17 can be an advertising aid to the people doing the project,

18 usually they also offer possibly contact people, the name of

19 the project supervisor or engineer, whatever may be named on

20 them, and offers some information to the public, as well as to

21 public officials if a contact needs to be made.

22 Q. Let me ask you about that last point. Why would the

23 information concerning the contractor or architect be valuable

24 to a public official during the course of a construction
25 project?

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1 A. A police officer may notice vandalism on the site during
2 patrol, you know, something's broken into, fire, any type of
3 situation like that. Or it gives a quick reference point
4 possibly for somebody involved with enforcement procedures to
5 be able to make contact.

6 Q. What about dangerous conditions which can arise on a
7 construction site?

8 A. Exactly, there could be hazardous situations that occur
9 as well.

10 Q. I skipped over (D), which is "bulletin boards not over
11 eight square feet in area for public, charitable or religious
12 institutions when the same are located on the premises of said
13 institutions." What's that one about?

14 A. These traditionally are tax-exempt organizations and
15 entities, they are located within your own property. And it
16 informs -- they normally are informational in purpose. Again,
17 eight square feet is a relatively small sign that doesn't often

18 pose the dangers and the possible safety considerations of
19 larger signs.

20 Q. "Memorial signs or tablets, names of buildings and date
21 of erection when cut into any masonry surface or when
22 constructed of bronze or other incombustible materials." Is
23 this for cornerstones and sport nameplates, things like that?

24 A. Yes, it is.

25 Q. Why is this exempt from permitting, this category?

55

1 A. It's carved into the structure. Normally, oftentimes
2 carved into a structure, carved into a piece of granite,
3 marble, whatever. Again, there's no real safety concern with
4 something that is carved into stone.

5 Q. "Traffic or other municipal signs, legal notices,
6 railroad crossing signs, danger and such temporary, emergency
7 or nonadvertising signs as may be approved by City Council."
8 That's exemption (H), and the purpose for that?

9 A. Obviously, the government needs to regulate traffic on
10 its roadways and highways, provide the service of street signs.
11 Those types of issues that must be done to aid everyone. And

12 those are exempt from the permitting process. And it does
13 offer some latitude to people who may wish to erect a sign
14 within a public right-of-way. City Council can be approached
15 to approve such a sign and that has been done in the City of
16 Bradford by various entities, including the University of
17 Pittsburgh at Bradford. When they came to City Council and
18 requested directional signage to their facility.

19 Q. Let me ask you this. As far as the government signs,
20 authorized by the government, are they subject to separate
21 regulations as far as their construction and design and
22 location?

23 A. Yes, they are. They must be constructed and erected and
24 maintained to the Pennsylvania Department of Transportation
25 standards.

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1 Q. Now, the last exemption is subsection (I), which applies
2 to "noncommercial signs not exceeding 12 square feet in area
3 placed upon private property by the owner or occupant of said
4 property." And it's noted this was added December 10, 2002, by
5 Ordinance No. 2986.3. The first question is at whose request

6 was that exemption added?

7 A. The ACLU.

8 Q. And am I correct that this exempts noncommercial signs

9 from all the permitting, bonding fee requirements under Chapter

10 178 and, essentially, leaves them regulated only to the extent

11 they could be classified as an unsafe sign?

12 A. That's correct.

13 Q. Mr. Peterson, I'd like to show you some photographs and

14 have you identify them.

15 THE COURT: Before you do that, Mr. Lanzillo. Mr.

16 Peterson, if you remember, how was it that the dimension of 12

17 feet was settled upon?

18 THE WITNESS: My understanding is that was an

19 agreement reached between our City Solicitor and the ACLU,

20 as to the appropriateness of the size. That allowed a

21 commercial message to be given and didn't constitute a sign

22 that would necessarily create safety concerns.

23 THE COURT: Do you mean a noncommercial message?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right, go ahead.

1 BY MR. LANZILLO:

2 Q. Mr. Peterson, this is Defendant's Exhibit R, photograph
3 of Moonan's Touchless Carwash in the City of Bradford?

4 A. Correct.

5 Q. The sign that's above the entranceway there of the door,
6 is that regulated under the ordinance?

7 A. Yes, it is.

8 Q. The ordinance at this point I'm talking about Section
9 178?

10 A. Yes.

11 Q. And what category of sign would that fall within?

12 A. Wall sign.

13 Q. And could you explain the requirements of the permitting
14 structure of the ordinance, how it would apply to that sign and
15 whatever safety concerns may exist with respect to a sign like
16 that?

17 A. The anchorage method of the sign to the building. The
18 overall size of the sign.

19 Q. Combustibility?

20 A. Combustibility of the sign, height requirement for the

21 sign.

22 Q. Now, with respect to anchorage of a sign, as I said

23 earlier in my opening statement, would I be correct that having

24 a properly mounted anchorage sign over a door, would be a

25 concern of yours in the City?

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1 A. Yes, it would.

2 Q. And this is indeed located within the City?

3 A. Yes, it is.

4 MR. LANZILLO: I move for the admission of

5 Defendant's Exhibit R.

6 MR. FRIEDMAN: No objection.

7 THE COURT: It's admitted.

8 BY MR. LANZILLO:

9 Q. This is Defendant's Exhibit S, it's a photograph of V & S

10 Medical Associates signage. What kind of sign is this under

11 the ordinance?

12 A. This would be a ground sign.

13 Q. And this is located within the City of Bradford?

14 A. Yes, it is.

15 Q. And what safety and construction design concerns would
16 you have with respect to this type of a sign?
17 A. This sign would first be reviewed for proper setback
18 requirements from a public right-of-way. This is along,
19 adjacent to a state highway. So, obviously, the sign would
20 have to be constructed off the right-of-way. It also would
21 concern the anchorage method, what portion of the sign
22 physically is installed underground, the method of how it's
23 installed underground to insure stability. Also, the sign does
24 not exceed maximum height requirements for signs. And that all
25 signage is attached appropriately to the support structures so

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1 that there is no danger of that falling down. There also would
2 be wind load requirements associated with a sign of this type.
3 Snow load on this type of a sign would not be critical.
4 Q. And what safety concerns arise out of those requirements,
5 especially when you have a sign like this located next to an
6 establishment and a sidewalk?
7 A. There's the potential for sign failure that could injure
8 either pedestrians, customers visiting this facility or the

9 motoring public.

10 MR. LANZILLO: Your Honor, I would move for the
11 admission of Defendant's Exhibit S.

12 THE COURT: It's admitted. Mr. Lanzillo, we're
13 going to take our luncheon recess. Let's be back here -- how
14 much more do you have to go on direct?

15 MR. LANZILLO: I'm estimating an hour, your Honor,
16 maybe a little less.

17 THE COURT: And this is your only witness?

18 MR. LANZILLO: I think I can cover everything -- I
19 do have one of the enforcement officers with knowledge
20 concerning the particular citations, but so, too, does Mr.
21 Peterson, I will try to get it done with him to move this
22 matter along.

23 THE COURT: Mr. Walczak, maybe I asked you, if I
24 did, I forgot, are you going to be putting on each of your
25 plaintiffs, or Mr. Friedman?

1 MR. FRIEDMAN: Really possibly one, possibly two,
2 the second one would be much more limited.

3 THE COURT: Well, we'll see how far we go, but it's

4 problematic as to whether we're going to finish this thing up

5 this afternoon perhaps. Let's do the best we can, all right.

6 (Luncheon recess from 11:58 a.m.; until 1:05 p.m.)

7 THE COURT: All right, Mr. Lanzillo.

8 BY MR. LANZILLO:

9 Q. Mr. Peterson, when we left off before the break, I was

10 reviewing with some photographs with you, I have just a couple

11 more I want to show you at this point. This is Defendant's

12 Exhibit T, which shows a number of things. But included in

13 Exhibit T is this big Country Fair sign, what type of sign is

14 that?

15 A. That's a ground sign.

16 Q. And what are the regulatory concerns with respect to that

17 sign?

18 A. Again, proper anchoring into the ground. Proper

19 anchorage of the signs attached to the upright structures of

20 the sign. Wind load requirements. Snow load on that type of a

21 sign is not a critical issue, but wind load is. Also, there

22 are requirements for visibility at intersections, a sign can't

23 be too low so it would block the visibility of that

24 intersection.

25 Q. That's pretty close to a corner?

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1 A. Yes, it is, it's at an intersection.

2 Q. Is that an illuminated sign?

3 A. Yes, it is, there's also illumination requirements that

4 you have to adhere to for that sign.

5 Q. And electric?

6 A. Yes, electric as well.

7 MR. LANZILLO: Your Honor, I move for the admission

8 of Exhibit T.

9 THE COURT: It's admitted.

10 BY MR. LANZILLO:

11 Q. Exhibit U is another picture of the very same Country

12 Fair station, the structure that is implicated here in the

13 center, what is that?

14 A. A canopy.

15 Q. Is that subject to Chapter 178?

16 A. Yes, it is.

17 Q. What are the regulatory and safety concerns with respect

18 to that structure?

19 A. Proper supporting of the overhead structure. The makeup
20 of the interior of the structure. What you see is a decorative
21 cornish on the structure, but there's actually integral steel
22 components within that and that those are designed for proper
23 stress. Also, for the snow load of the City of Bradford. It
24 would meet the wind load requirements. And with this type of
25 structure, there is also requirements in place to address

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1 adequate drainage because this has the ability to acquire water
2 sitting on top of itself. There's also drainage of this type
3 of structure that has to be addressed.

4 MR. LANZILLO: I would move for the admission of
5 Exhibit U.

6 THE COURT: It's admitted.

7 BY MR. LANZILLO:

8 Q. Mr. Peterson, Bradford obviously has in place a
9 permitting system that requires the obtaining of a permit
10 before the erection of a sign unless it's an exempt sign.
11 Could you explain to the court why this type of a permitting
12 system requiring permit approval exists?

13 A. It allows a proper review of the structure of a sign, the
14 method of anchorage, the underground footings and supports for
15 the sign that may be required and necessary. And also that it
16 complies with various setback requirements from right-of-ways,
17 etc. And actually that prevents unnecessary cost and burdens
18 to the party desiring to install the sign. If there is a
19 problem, that's caught early on in the permitting process and
20 can be corrected.

21 Q. Would you be able to protect the public, consistent with
22 the objectives of the ordinance, if there wasn't this prior
23 approval process, but rather a simply an inspection after the
24 fact?

25 A. It would make the process much more difficult and,

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1 obviously, the opportunity would arise that you may not know
2 that a sign has been erected in that area and if the sign was
3 not erected properly, it could be a safety problem.

4 Q. And you mentioned fairness to the applicant or giving
5 them the opportunity to cure any problems. If you discover a
6 problem after the fact, if you didn't have this preconstruction

7 review and you found that anchorage on a substantial sign such
8 as the Country Fair sign was not adequate, would that person be
9 required to tear down and rebuild that sign?

10 A. Yes, they would. Or to make the sign compliant with the
11 regulation of the ordinance.

12 Q. Let me just ask you about practicality, also. As
13 compared to reviewing plans and specifications, wind loads,
14 snow loads and the like prepared by professionals, is it
15 effective to simply examine the sign after the fact to assess
16 its safety and stability?

17 A. It would be extremely difficult. If there was not some
18 type of a process that required this information to be
19 submitted previously, the building inspectors would not have
20 this information available to check the sign itself.

21 Q. Has any permit ever been denied, to your knowledge, based
22 on the content of the sign?

23 A. No.

24 Q. Let me talk to you a few minutes about the Historic
25 District ordinance. This is Section 125-15(E). I'm correct,

1 am I not, that that is actually part of the larger ordinance
2 governing the Historic District?

3 A. Yes, it is.

4 MR. LANZILLO: Your Honor, for the record, I know
5 you have this in the materials, but to insure that a complete
6 copy is made a part of the record, I'd like to offer as
7 Defendant's Exhibit Q a copy of the entire Chapter 178.

8 THE COURT: It's admitted.

9 BY MR. LANZILLO:

10 Q. Mr. Peterson, approximately how much of the City of
11 Bradford is encompassed within the Historic District?

12 A. Relatively, 5 to 10 percent, it's a very small section of
13 the overall size of the City.

14 Q. Let me show you what we've marked as Defendant's Exhibit
15 W, can you identify what we've marked as Exhibit W?

16 A. This is the map of the current Historic District in the
17 City of Bradford.

18 MR. LANZILLO: I would move for the admission of
19 Defendant's Exhibit W.

20 THE COURT: It's admitted.

21 BY MR. LANZILLO:

22 Q. Is the Historic District in the City of Bradford

23 recognized by the National Register of Historic Places?

24 A. Yes, it is.

25 Q. Let me show you what's been marked as Defendant's Exhibit

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1 X, is this a copy of the certificate recognizing or

2 acknowledging the listing of the Bradford Historic District on

3 the National Register of Historic Places?

4 A. Yes, it is.

5 Q. The second page of Exhibit X is a letter from the

6 Pennsylvania Historical Museum Commission directed to you; is

7 this a letter acknowledging or congratulating the City on its

8 acceptance into that program?

9 A. Yes, it is. This letter states that we were, our

10 Historic District, was placed in the National Register of

11 Historic Places on August 31st of 2000.

12 Q. And was that designation a matter of some celebration

13 within the City?

14 A. Yes, it opened the City to a wide variety of programs

15 available, accompanying the certification. Main Street manager

16 programs, facade improvement programs and grants. A tax

17 incentive program for property owners. That was welcome by the

18 City of Bradford.

19 Q. The third and fourth pages of Exhibit X are actually from

20 the Bradford Era, am I correct, the designation was front page

21 news in the Bradford Era?

22 A. Yes, it was.

23 MR. LANZILLO: Move the admission of Defendant's

24 Exhibit X.

25 THE COURT: It's admitted.

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1 BY MR. LANZILLO:

2 Q. I want to talk to you a little bit about the process and

3 requirements for designation on the National Register. Am I

4 correct that the City had to submit a very extensive

5 application and registration form for that program?

6 A. Yes.

7 Q. This is Exhibit Y, which is a fairly thick document. I'm

8 displaying the first page, can you tell me is this a copy of

9 the registration form application?

10 A. Yes, it is.

11 MR. LANZILLO: I move for the admission of
12 Defendant's Exhibit Y?

13 THE COURT: It's admitted.

14 BY MR. LANZILLO:

15 Q. This document contains extensive information concerning
16 the Historic District, the buildings, construction periods,
17 architecture and the like. How was this information compiled?

18 A. We hired an expert in this area of historic preservation
19 and historic documentation, David Taylor of Taylor and
20 Associates, out of Brookville, Pennsylvania, to do the actual
21 application process for the City. That included the writing of
22 the application, the inventory of the historic buildings, and
23 all the narratives necessary to accompany this for
24 consideration.

25 Q. You mentioned the inventory of historic buildings -- I

1 referred to that earlier in these proceedings, I'll do this in
2 segments. This is Defendant's Exhibit Z, what is included in
3 the inventory of historic buildings?

4 A. This document catalogs over 160 buildings that are
5 located within our Historic District. Giving them the address,
6 the different materials, the historic function, what it was
7 originally used for. The current function, architectural style
8 or influence. The primary construction, material used in the
9 building. Roof type. Height. Approximate dates of
10 construction. Whether or not it's a contributing or
11 non-contributing building to the Historic District. And then a
12 narrative of the buildings and the architectural features.

13 Q. Is this document available to and used by the HARB board
14 in evaluating improvements in signs for consistency with the
15 surrounding buildings?

16 A. Yes, it is.

17 MR. LANZILLO: I would move for the admission of
18 Defendant's Exhibit Z.

19 THE COURT: It's admitted.

20 BY MR. LANZILLO:

21 Q. Is the Historic District of Bradford also recognized by
22 the Pennsylvania Historical Museum Commission?

23 A. Yes, it is.

24 Q. Am I correct that there's actually a Historic District
25 enacted by the Pennsylvania legislature?

1 A. Yes.

2 MR. LANZILLO: For convenience I've marked as
3 Defendant's Exhibit AA, a copy of the Historic District Act
4 that's codified at 53 PS 8001, et seq., which is probably
5 unnecessary, but I'd move for its admission.

6 THE COURT: It's admitted.

7 BY MR. LANZILLO:

8 Q. I'm just going to draw your attention, Mr. Peterson, to
9 one provision of this Act under Section 4(c), there's a
10 requirement that any person applying for a building permit with
11 any Historic District shall be given notice of a meeting of the
12 Board of Historical Architectural Review, which is to council
13 of the governing body, and a meeting of the governing body,
14 which is to consider the granting of a certificate of the
15 appropriateness for the said permit and may appear before the
16 said meeting to explain his reasons therefore, in the event of
17 a failure to recommend to the board and in the event of its
18 disapproval, the governing body shall also indicate what
19 changes in this plan and specifications would meet its

20 conditions for protecting the distinctive historical character
21 of the Historic District. Mr. Peterson, my question is do you
22 understand the City of Bradford and the HARB board would be
23 subject to this regulation?
24 A. Yes, they are.
25 Q. Now, there were other requirements, were there not, as

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1 part of the certification process necessary to become a
2 Historic District?
3 A. Yes, there are.
4 Q. I will show you a document I've marked as Defendant's
5 Exhibit BB, again, this is an oversized document, so I will
6 show you part of it. The first page of the document appears to
7 be a cover letter to a Diane Galt of the City of Bradford, from
8 a Janice Stramara. It's followed then by a resolution of the
9 City of Bradford giving permission for the execution of an
10 agreement between the Pennsylvania Historical Commission -- I'm
11 sorry, the Pennsylvania Historical Museum Commission and the
12 City of Bradford to become a certified local government. And
13 then a copy of the agreement, certification agreement follows.

14 Could you explain to the court what this agreement relates to,

15 what this is all about?

16 A. The certified local government provisions require a

17 municipality applying for certified local government to take a

18 necessary number of steps to do this. Requires the creation of

19 a Historic District ordinance, the creation of a HARB board.

20 It covers the training that the HARB board members are required

21 to obtain, and to keep current with. And in doing so, it

22 allows the City government to avail themselves of a raft of

23 programs that are involved in this, including the Main Street

24 program, the facade improvement programs, which are grants and

25 tax incentive programs to property owners within the Historic

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1 District that do repairs and improvements to their buildings.

2 Q. So under the Historic District Act of Pennsylvania in

3 this agreement, the City was required to form a HARB board to

4 constitute the HARB board, by providing a certain number of

5 members and provide training to those HARB members?

6 A. Yes.

7 Q. Do you recall the required composition of the HARB board?

8 A. The HARB board is a nine member panel, consisting of a
9 licensed architect, a licensed real estate broker, the Building
10 Inspector for the City of Bradford. And the remaining members
11 are to be persons with a general interest and knowledge of,
12 genuine interest in the historic aspects as they relate to our
13 Historic District. We added our City Historian to ours as well
14 to guide the board in a number of areas.

15 Q. She's one of the six members?

16 A. Yes.

17 Q. In addition to the registered architect, licensed real
18 estate broker and the Building Inspector?

19 A. Yes.

20 Q. What is her name?

21 A. Sally Costic.

22 THE COURT: What does a City historian do?

23 THE WITNESS: She actually documents the history of
24 the city and the history, her personal goal is the structures
25 and buildings within the City of Bradford, she's actually

1 published several books relating to, picture books, that are on

2 the early history of the City of Bradford.

3 THE COURT: Go ahead.

4 BY MR. LANZILLO:

5 Q. Are HARB members required to have initial and ongoing
6 training?

7 A. Yes, they are.

8 Q. Is that a minimum of eight hours annually?

9 A. I believe that's correct.

10 Q. Now, you also mentioned that under the Act, the
11 Pennsylvania law, that authorizes the creation of Historic
12 Districts. Under the agreement the City was required to have a
13 Historic District ordinance, that of course is Chapter 125. My
14 question to you is where did the City get that ordinance and
15 what did it pattern its ordinance after?

16 A. The City of Bradford's ordinance is patterned after a
17 model ordinance prepared by the Pennsylvania Historic Museum
18 Commission.

19 MR. LANZILLO: I would move for the admission of
20 Defendant's Exhibit BB.

21 THE COURT: What was it, I'm sorry?

22 MR. LANZILLO: Exhibit BB, your Honor.

23 THE COURT: BB, it's admitted.

24 BY MR. LANZILLO:

25 Q. Mr. Peterson, am I correct that this is a copy of the

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1 model Historic District ordinance for local governments in

2 Pennsylvania produced by the Pennsylvania Historical Museum

3 Commission, Bureau for Historic Preservation?

4 A. Yes, it is.

5 Q. Is this the ordinance upon which Bradford patterned and

6 based its ordinance?

7 A. This is what the City of Bradford's ordinance was

8 patterned on, yes.

9 Q. Let me show you what has been designated Exhibit DD, I've

10 marked as Exhibit DD, it appears to be Section 501, and for the

11 record let me read it.

12 THE COURT: What is this a part of again, Mr.

13 Lanzillo, what was the larger document?

14 MR. LANZILLO: This is part of the model Historic

15 District ordinance for local governments in Pennsylvania

16 produced by the Pennsylvania Historical Museum Commission.

17 This is the template upon Bradford and many other

18 municipalities that created their ordinances.

19 THE COURT: All right, go ahead.

20 BY MR. LANZILLO:

21 Q. Section 501(a) of the model ordinance states "no sign or

22 permanent external advertising display of any kind shall be

23 erected, altered or used in the Historic District except for

24 advertising informing the public," it says or a service -- "of

25 service, business, occupation or profession carried on" this is

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1 a typo, I apologize, I'm just noting --

2 THE COURT: But not completely -- there's sics in

3 both of these.

4 MR. LANZILLO: There's several typographic errors,

5 the court obviously noting the fact instead of saying the word

6 professional, I think it fits the model ordinance as well.

7 THE COURT: Can you lay that at the feet of your

8 printer?

9 THE WITNESS: I'm not sure, your Honor, who to lay

10 that one on.

11 THE COURT: Go ahead.

12 MR. LANZILLO: Obviously, the Commonwealth and
13 Bradford use the same printer.

14 THE COURT: It's a finding I don't have to make,
15 though. Go ahead.

16 BY MR. LANZILLO:

17 Q. "Carried on, in or about the property on which such sign
18 or permanent external advertising display appears." In
19 conjunction with this, "no such sign or advertising display of
20 any kind or for any purpose shall be erected or altered,
21 notwithstanding zoning sign approval, until an application for
22 permit to make such erection or alteration has been reviewed by
23 HARB for conformity in exterior material composition, exterior
24 structural design, external appearance and size with similar
25 advertising or information media used in the architectural

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1 period of the district and a permit granted thereon." Is this
2 the language from which Section 125-15(1) was derived?
3 A. Yes, it is.

4 MR. LANZILLO: Move the admission of Defendant's

5 Exhibit DD.

6 THE COURT: It's admitted.

7 MR. LANZILLO: For record purposes, I move the

8 admission of a copy of Chapter 125 of the Historic District

9 ordinance adopted in Bradford as Exhibit CC.

10 THE COURT: It's admitted.

11 MR. LANZILLO: I'm not sure this is the entire copy.

12 THE COURT: Is that the whole copy, CC?

13 MR. LANZILLO: This is the whole ordinance, your

14 Honor.

15 THE COURT: I'm sorry, which ordinance is it?

16 MR. LANZILLO: This is Chapter 125.

17 THE COURT: Chapter 125 ordinance, all right.

18 MR. LANZILLO: Your Honor, we would probably save

19 time, I don't know whether it's necessary to go through these

20 with the witness, but I pulled just a few examples of

21 ordinances, Historical District ordinances from other locals

22 that adopted identical or substantially identical language

23 utilized by Bradford.

24 THE COURT: Let's do it this way. Rather than

25 unnecessarily wasting time, in the interest of time, would the

1 plaintiffs stipulate that elsewhere in the Commonwealth there
2 are ordinances that are identical or at least sufficiently
3 similar to be functionally identical to the Bradford Historic
4 Preservation Ordinance?

5 MR. FRIEDMAN: With the same typographical errors?

6 THE COURT: Save the typographical errors?

7 MR. FRIEDMAN: Judge, in all honesty, I've never
8 seen them, I don't know what relevance there is to them,
9 either.

10 THE COURT: Neither do I.

11 MR. FRIEDMAN: If there are, I just have no idea.

12 THE COURT: Then that means you can't stipulate, go
13 ahead and put your proof on.

14 BY MR. LANZILLO:

15 Q. Mr. Peterson, at my request did the City obtain some
16 copies of similar ordinances from other locals?

17 A. Yes, they did.

18 Q. This was by no means an exhaustive search, this was just
19 a few townships and municipalities across the state?

20 A. Yes.

21 Q. Let me show you a copy of the Historic District's
22 ordinance for Bedford, Pennsylvania. I won't read this in its
23 entirety, but I draw your attention to page 27-89, subparagraph
24 4 dealing with signs. This is one of the ordinances that was
25 obtained by the City?

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1 A. Yes, it is.

2 MR. LANZILLO: Your Honor, to save time, your Honor
3 can do the comparison of the language and decide for himself
4 whether they are substantially identical. I would move this
5 into evidence as Defendant's Exhibit EE.

6 THE COURT: It's admitted. Just for my benefit,
7 it's admitted -- I'm not saying there's a hundred of these
8 ordinances out there, but hypothetically, if there's a hundred
9 of these ordinances, if they're all the same, could
10 theoretically be perfectly constitutional. Or a hundred of
11 them could all be constitutionally infirm, so what difference
12 does it make how many of them there are?

13 MR. LANZILLO: Your Honor, this is again simply --

14 THE COURT: Facial challenge.

15 MR. LANZILLO: I'm sorry, your Honor.

16 THE COURT: Insofar as a facial challenge, if one is
17 bad, they're all bad. If one is good, they're all good.

18 MR. LANZILLO: I agree on the facial challenge, your
19 Honor. This is designed solely to respond to the allegation,
20 that you have to step back and remember that the plaintiffs'
21 position was that our Historic District was by local
22 designation only, essentially, a pretext for getting at the
23 free speech rights of these plaintiffs. This is simply
24 additional evidence to show that we patterned this after a
25 model ordinance that is widely used to dispel any possible

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1 implication --

2 THE COURT: Of bad motive?

3 MR. LANZILLO: Of pretext.

4 THE COURT: All right, go ahead.

5 BY MR. LANZILLO:

6 Q. This ordinance 175 from the Township of Whitemarsh,
7 Pennsylvania, in Montgomery County, dealing with their Historic
8 District. This is also an ordinance that was obtained by the

9 City at my request?

10 A. Yes.

11 Q. And it, too, has a sign ordinance for the Historic

12 District substantially similar or identical to Bradford's?

13 A. Yes. They didn't catch the typo, either.

14 MR. LANZILLO: Move the admission of Exhibit FF.

15 THE COURT: It's admitted.

16 MR. FRIEDMAN: We agree to the admission of all of

17 these. With the exception that we don't think there's any

18 relevance, other than that.

19 THE COURT: All right, they're all admitted.

20 MR. LANZILLO: Those would be Exhibits GG, HH, II,

21 and a player to be named later. And JJ. Ordinances from

22 various locals across the Commonwealth.

23 MR. LANZILLO: Thank you, Mr. Friedman.

24 BY MR. LANZILLO:

25 Q. I want to look at specific sentences of Section

1 115-15(E)(1), and ask you about the City's interpretation of

2 that ordinance and how it has been applied. The first sentence

3 of the regulation states "no sign or permanent external
4 advertising display of any kind shall be erected, altered or
5 used in the Historic District except for advertising, informing
6 the public of a service, business, occupation or professional
7 carried on, in or about the property on which such sign or
8 permanent external advertising is displayed." Could you tell
9 the court, Mr. Peterson, does that sentence ban noncommercial
10 speech in the Historic District of Bradford?

11 A. No, it does not.

12 Q. Has it ever been interpreted as banning noncommercial
13 speech in the Historic District of Bradford?

14 A. No, it has not.

15 Q. Has anyone ever been cited for putting up a sign with a
16 noncommercial message in the Historic District?

17 A. No, they have not.

18 Q. The reference to the word service, how has the City
19 understood and interpreted that word?

20 A. Service would be anything related to a message that the
21 owner of that property may wish to put out as public notice.

22 Q. With respect to the language in that first sentence,
23 referring to the various activities carried on, in or about the

24 property on which such sign or permanent external advertising

25 is displayed, is that an on-site, off-site distinction?

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1 A. Yes.

2 MR. LANZILLO: Your Honor, I'm not going to review

3 them unless the court asks or instructs me to do so.

4 THE COURT: Review what?

5 MR. LANZILLO: But I would like to offer into

6 evidence a copy of the pending amendments because I do believe

7 they go to the issue of eminent and irreparable harm, they have

8 some relevance.

9 THE COURT: All right, I'll take them and decide

10 what relevance they have.

11 MR. LANZILLO: For the record, these are contained

12 in Defendant's Exhibit P.

13 BY MR. LANZILLO:

14 Q. Now, the second sentence of Section 125.15(E)(1) states

15 "no display of any kind or for any purpose shall be erected or

16 altered, notwithstanding zoning sign approval until an

17 application for a permit to make such erection or alteration

18 has been reviewed by HARB for its conformity to exterior
19 material composition, exterior structural design, external
20 appearance and size with similar advertising or information
21 media used in the architectural period of the district and a
22 permit granted thereon." My question is, Mr. Peterson, what
23 guidelines are used by HARB in applying this ordinance?
24 A. There are guidelines contained within the actual HARB
25 ordinance itself, that guides the commission council utilized

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1 by the public. There are guidelines within the sign ordinance
2 that can be utilized as well. There is an extensive packet of
3 materials that are given to every applicant for HARB -- for
4 work within the Historic District, that has the design
5 guidelines and standards. It has a checklist for them to
6 comply with, and it actually encourages them to have open
7 dialogue back and forth with members of the HARB board prior to
8 the actual HARB hearing. There also is available in my office
9 every application that has been received from HARB, so they can
10 see other types of applications, the pictures and diagrams,
11 whatever might accompany that. Oftentimes there's colored

12 photos for color schemes. There's also available in my office

13 the historic chart that is used by the City of Bradford HARB

14 board for determining appropriate color combinations and

15 schemes involving both.

16 Q. You mentioned earlier that the property inventory had

17 been marked as Exhibit Z, is also used as a guide?

18 A. Yes, it is. That's also available in my office, as well

19 as through any member of the HARB board.

20 Q. Just to make sure I have this straight, there is the

21 ordinance itself, the sign portion also of the guidelines that

22 are contained in the rest of the ordinance, the HARB manual and

23 checklist, which I've marked as Defendant's Exhibit LL, which I

24 will display momentarily, the inventory property guide, which

25 is Exhibit Z. You mentioned the historic paint guide or color

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1 guide?

2 A. Yes.

3 Q. This is a guide that shows approved colors?

4 A. There actually is a very extensive color chart that the

5 HARB board uses to assist the people coming for them and to

6 pick out appropriate color combinations and color schemes.

7 Q. Is that available to the public for inspection?

8 A. Yes, it is.

9 Q. And you also mentioned, of course, the permit files on
10 record which provide a record showing what others have done
11 consistent with the environs?

12 A. Yes, there are.

13 Q. This is a copy of Exhibit LL, which appears to be about
14 23 pages in length. Which contains the checklist that you
15 mentioned and the application process and the other information
16 that you described as far as guidelines; is this the HARB
17 manual that you had mentioned earlier?

18 A. This is the HARB application packet.

19 MR. LANZILLO: Your Honor, I move the admission of
20 Defendant's Exhibit LL.

21 THE COURT: It's admitted.

22 BY MR. LANZILLO:

23 Q. I believe I have just a couple more minutes, what I'd
24 like to do is show you some of the photographs for buildings
25 within the HARB.

1 THE COURT: Are these ones that have already been
2 identified?

3 MR. LANZILLO: They've been identified in my
4 opening, your Honor, they have not been admitted.

5 BY MR. LANZILLO:

6 Q. Exhibit QQ, this is, Mr. Peterson, the photographs of
7 Movie Magic -- everyone can see the signage. Was this done
8 pursuant to HARB approval and the permitting process of the
9 ordinance?

10 A. Yes, it was.

11 Q. What about the building depicted here, what is this a
12 picture of?

13 A. This is former Forest Oil Building within our Historic
14 District. This building also went to the HARB board, through
15 the HARB application process for a new color scheme on the
16 building, and they also took some signage actually to HARB as
17 well.

18 Q. Exhibit RR. This is a picture of the Grocery Stretcher,
19 which has a wall sign, and what is this again?

20 A. Projecting sign.

21 Q. Projecting sign, excuse me, did those go through the HARB

22 process?

23 A. Yes, they did.

24 Q. Exhibit NN. Exhibit MM is a closer view of the

25 projecting sign for the same, is that correct?

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1 A. Yes.

2 Q. Exhibit PP is a photograph, Furniture, Carpet and

3 Mattress Outlet with signage in the storefront, did that go

4 through the HARB process?

5 A. Yes, it did.

6 Q. Finally, what looks like -- is that Angelo's Family

7 Restaurant?

8 A. That's Angel's Family Entertainment Center. And yes,

9 that particular project also went through the HARB application

10 process.

11 Q. That's Defendant's Exhibit OO.

12 MR. LANZILLO: Your Honor, I move the admission of

13 Defendant's Exhibit NN, MM, PP and OO.

14 THE COURT: What about QQ?

15 MR. LANZILLO: QQ and RR.

16 THE COURT: Okay, those are admitted. Mr. Peterson,
17 let me just ask you a question here. In this Historic area
18 that we're talking about, it take it, would it be accurate to
19 say that the majority of buildings with structures within that
20 area that are historic within the meaning of the term, whether
21 it's by age or otherwise, but inevitably there would have to be
22 some structures in the Historic area that just by virtue of
23 having popped up earlier would not have otherwise qualified, is
24 that right?

25 THE WITNESS: Yes, your Honor. On that inventory

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1 listing, it actually states whether that building is
2 contributing or noncontributing. Obviously, new structures
3 have been erected in downtown are listed as noncontributing
4 structures.

5 THE COURT: If they're noncontributing, I'm not even
6 sure this is necessarily relevant, but just for my background,
7 if they're noncontributing, are they subject to the
8 requirements of the Act?

9 THE WITNESS: Yes, they are.

10 THE COURT: Okay. Which might mean, for instance,
11 that if they wanted to put signage in front of a brand new
12 modern building, the signage in front of the building might
13 have to be checked to see if it's in conformance, not with a
14 brand new building, but with the other signage in the area?

15 THE WITNESS: That's correct, your Honor. I would
16 also say that we have had no new buildings constructed on Main
17 Street since we have adopted the new ordinance and became a
18 certified local government. Any new building construction
19 actually has to -- well, I'll take that back, your Honor. We
20 did have a very significant building constructed, it's a Tops
21 Supermarket, that went through the HARB process. And very
22 lengthy and detailed revisions to that building, so it was not
23 a box. It has decorative cornish, it has even so far as the
24 canopy of their gas station that they erected later, still has
25 the same decorative effect to make it blend into the Historic

1 District. Any building that's been constructed since '99 goes
2 to HARB for conformance of the actual building itself.
3 Buildings over the '40s and '50s, no. But they would if they

4 wanted to put up a sign.

5 THE COURT: Go ahead, Mr. Lanzillo.

6 BY MR. LANZILLO:

7 Q. These are, as I understand, please confirm for me,

8 buildings next door to Mr. Riel's property, the plaintiff Mr.

9 Riel's property at 52 Mechanic Street?

10 A. That's correct.

11 Q. This building here in Exhibit SS, is that Just Riding

12 Along?

13 A. Yes, it is.

14 Q. Would you tell the court about that business?

15 A. That's a bicycle shop. The owner is a young gentleman,

16 who's just starting out in business. The City actually

17 provided some funding to him to establish his business. He did

18 go through the HARB process for his color scheme of his

19 building and also for his signage.

20 Q. Exhibit TT, these are just structures with no signage to

21 the left of 52 Mechanic Street?

22 A. That's correct.

23 MR. LANZILLO: I move the admission of Defendant's

24 Exhibits SS and TT.

25 THE COURT: They're admitted.

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1 BY MR. LANZILLO:

2 Q. Are you familiar with the reasons for the citations

3 issued to the plaintiffs in this case?

4 A. Yes, I am.

5 Q. Could you tell the court for what the plaintiffs were

6 cited?

7 A. Failure to obtain HARB approval.

8 Q. Was any plaintiff ever cited for posting a sign with a

9 noncommercial message?

10 A. No.

11 Q. I'm going to show you a couple of final photographs as

12 the last bit of evidence I have for this witness. This is

13 Exhibit A, Defendant's Exhibit A, do you recognize that sign?

14 A. Yes, I do.

15 Q. Where is that located?

16 A. That is located on Seward Avenue in the City of Bradford.

17 Q. Who owns the underlying property?

18 A. Mr. Riel.

19 Q. And the sign reads "How is the Mayor Like a Hemorrhoid?"

20 A. Correct.

21 Q. And I think we can agree that would appear to be a

22 noncommercial message?

23 A. Yes.

24 Q. Has Mr. Riel been cited for this sign?

25 A. No, he has not.

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1 Q. I'll actually mark this group of photos collectively as

2 Defendant's Exhibit A, page two of Exhibit A is actually just a

3 larger version of the last sign. Here's another sign on there,

4 is this also on the Seward property?

5 A. Yes, it is.

6 Q. On Mr. Riel's property, this one reads "What is a

7 Political Prostitute?"

8 A. Correct.

9 Q. Has he ever been cited for that sign?

10 A. No.

11 Q. What about this sign, where is that one located?

12 A. Same location.

13 Q. This one reads "Is the City of Bradford Run Like a

14 Brothel?"

15 A. Correct.

16 Q. Has Mr. Riel ever been cited for that sign?

17 A. No.

18 Q. This next page is another picture of the sign that reads

19 "What is a Political Prostitute?" Page six of the exhibit asks

20 "How corrupt is City Hall?" Is this also on the same property

21 owned by Mr. Riel?

22 A. Yes, it is.

23 Q. Has he ever been cited for that sign?

24 A. No.

25 Q. Just so you don't feel slighted, Mr. Peterson, here's one

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1 that I think refers to you, it says "Good Luck John Peterson!"

2 Is that on that same property?

3 A. Yes.

4 Q. Has he been cited for that sign?

5 A. No.

6 Q. Page eight another photograph, I believe you've seen that

7 one, "How Corrupt is City Hall?" Same property?

8 A. Yes.

9 Q. No citation?

10 A. No.

11 Q. Here's one, "Is our Mayor Arrogant, Mean or Just Plain

12 Rude?" Same property?

13 A. Yes.

14 Q. Citation?

15 A. No.

16 Q. "Has the Mayor Failed Herself," is the sign depicted on

17 page 10 of Exhibit A. Any citation with this one?

18 A. No.

19 Q. Page 11 is just another copy of a sign we've seen before,

20 it's page 12.

21 MR. LANZILLO: I would move for the admission of

22 Defendant's Exhibit A.

23 THE COURT: It's admitted.

24 BY MR. LANZILLO:

25 Q. Those signs are all within the City of Bradford?

1 A. Yes.

2 Q. They're not within the Historic District, are they?

3 A. No, they are not.

4 Q. They would be exempt under 178-15(I)?

5 A. That section of the general sign ordinance, yes.

6 Q. Exhibit B are two photographs, still photographs of

7 another property in the City of Bradford; do you recognize the

8 property?

9 A. It's property located at the intersection of Interstate

10 Parkway and West Washington Street, outside of our Historic

11 District.

12 Q. This is a busy intersection?

13 A. Yes, it is, it's one of the busiest traveled roadways in

14 Bradford.

15 Q. Do you know who posted the sign depicted on the first

16 page of Defendant's Exhibit B?

17 A. I believe it would be Mr. Riel.

18 Q. Has there been a citation issued for this sign?

19 A. No.

20 Q. Now, this one is really hard to read, the second page of

21 Exhibit B. Let me begin by asking you is this the same

22 building that we were discussing relative to the first page of

23 Exhibit B?

24 A. Yes, it is.

25 MR. LANZILLO: Your Honor, can you make out the

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1 contents of the sign, looks like "Make City Council a

2 Democratic Forum Again, Vote Riel for" -- is that Mayor?

3 A. I believe that was the content of the sign, yes.

4 Q. Do you know whether a citation was ever issued for that
5 sign?

6 A. No, there was not.

7 Q. This, too, was exempt under the general ordinance?

8 A. Yes.

9 Q. It's outside of the Historic District?

10 A. Yes.

11 MR. LANZILLO: Your Honor, that's all I have for
12 this witness at this time.

13 THE COURT: All right.

14 MR. LANZILLO: Your Honor, I would move into
15 admission of exhibits -- if I haven't done so already, Exhibits
16 A and B.

17 THE COURT: They're admitted.

18 MR. LANZILLO: Thank you, Mr. Peterson, counsel will
19 have some questions for you.

20 CROSS-EXAMINATION

21 BY MR. FRIEDMAN:

22 Q. Mr. Peterson, I have several questions, although, I will
23 not be nearly as lengthy. I'd like to first refer you to
24 Defendant's Exhibit A, which is what you were just testifying
25 concerning, is that correct?

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1 A. Yes.

2 Q. Do you know the dimensions of this particular sign?

3 A. I did not measure that sign, no.

4 Q. I want you to assume for a moment that sign is four feet
5 by four feet, it's 16 square feet; would that sign be in
6 violation of the Bradford City ordinance Section 175?

7 A. It would if it exceeded 12 square feet, it would be in
8 violation.

9 Q. Did you measure it?

10 A. No, I did not.

11 Q. Is it still standing?

12 A. I don't believe that sign is there currently.

13 Q. How about the sign which Mr. Lanzillo showed you as

14 Defendant's Exhibit B on the side of a building, did you

15 measure that sign?

16 A. No, I did not.

17 Q. So you don't know if in fact that sign exceeds 12 square

18 feet, is that correct?

19 A. That's correct.

20 THE COURT: Let me interrupt you if I could for a

21 second. Just for my own clarification here. Is it your

22 understanding that the 12 square foot requirement applies not

23 only to noncommercial signs, but also -- let me rephrase it,

24 that's a bad way to put it. Are wall signs exempt regardless

25 of their size?

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1 THE WITNESS: Noncommercial wall signs?

2 THE COURT: No, any kind of wall sign; do you

3 understand my question?

4 THE WITNESS: No, I don't, your Honor.

5 THE COURT: Under (I) it says "noncommercial signs",
6 I'm back on 178, I apologize for jumping around.
7 "Noncommercial signs not exceeding 12 square feet placed upon
8 private property by the owner or occupant of said property."
9 So that means if you have a noncommercial sign and if it's
10 exempt if it doesn't exceed 12 square foot, right?

11 THE WITNESS: Correct.

12 THE COURT: Now, look up at (C), "signs painted on
13 the exterior of a building or structure." My question to you
14 is for signs painted on the exterior of a building or
15 structure, is there any square footage requirement like there
16 is under (I)?

17 THE WITNESS: No, your Honor.

18 THE COURT: All right, go ahead.

19 BY MR. FRIEDMAN:

20 Q. Just to follow-up, it's okay to paint a sign on the side
21 of a wall of any size, but if you put it on a freestanding
22 sign, such as exists in Exhibits A, B and C, then they could be
23 in violation if they exceed the 12 square foot message, is that
24 correct, 12 square foot sign?

25 A. Yes.

1 Q. Now, Mr. Peterson, referring back to the HARB
2 ordinance -- I'll put that up in front of you, it says "no sign
3 or permanent external advertising display of any kind shall be
4 erected, altered or used in the Historic District except for
5 advertising, informing the public or service, business,
6 occupation or professional carried on, in or about the property
7 on which such sign or permanent external advertising is
8 displayed." Have I read that correctly?

9 A. Yes.

10 Q. Is it your testimony here today that service advertising,
11 informing the public of a service in or about the property
12 includes a political sign "Vote for Joe"?

13 A. Yes.

14 Q. What service is being advertised when a person indicates
15 "Vote for Joe"?

16 A. Sort of public information.

17 Q. So anything that goes up as a service, it's public
18 information, is that correct?

19 A. Yes.

20 Q. Is there anything that's been issued in writing by the

21 City of Bradford or by HARB indicating that that definition is

22 controlling, that definition is what goes out to the public?

23 A. I'm not aware that there's a document that exists

24 concerning that, no.

25 Q. Has HARB or has the City or have you issued anything to

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1 the public whatsoever advising them that political signs are a

2 service as indicated in the ordinance?

3 A. I don't believe there's any documents to that effect.

4 Q. Let me ask you this. When is the first time that you

5 ever advised anyone that service included a political sign,

6 that service included a sign that says "Vote for Joe" or

7 criticizing the Mayor, that that was a service?

8 A. I would not be in a position today to advise somebody of

9 that.

10 Q. Why is that?

11 A. Because I'm no longer on the HARB board.

12 Q. So, in fact, you have never advised anyone of that,

13 correct?

14 A. I have not, no.

15 Q. And, to your knowledge, no one from the City has ever
16 advised anyone of that until today, is that correct?

17 A. I can't answer that.

18 Q. You have no knowledge?

19 A. I have no knowledge. I did serve on that board till
20 2000, I have no knowledge of any of the board's activities
21 since the year 2000.

22 Q. If I understand the procedure correctly, when one has a
23 building in the HARB district, such as plaintiffs in this case,
24 and they wish to put up a political sign, they have to make
25 application to HARB, is that correct?

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1 A. The City of Bradford has never enforced any action
2 against political signs.

3 Q. Well, they've cited Mr. Riel, haven't they?

4 A. They cited Mr. Riel for not applying to the HARB board.

5 Q. So in effect they have taken action against somebody for
6 putting up a political sign without getting HARB approval,
7 isn't that correct?

8 A. He was cited for not applying for the sign to the HARB

9 board.

10 THE COURT: For what?

11 THE WITNESS: For not applying to the HARB board for

12 approval.

13 BY MR. FRIEDMAN:

14 Q. And with a political sign, that was the subject of his

15 not applying to HARB, correct, that's the sign we're talking

16 about?

17 THE COURT: Which sign was it, I saw three or four

18 different political signs?

19 MR. FRIEDMAN: I have to ask the person who actually

20 cited him, your Honor, but it's one of the signs or several of

21 the signs --

22 THE COURT: Are they all on the same property?

23 MR. FRIEDMAN: They are, your Honor.

24 THE COURT: And they're all in the Historical

25 District?

1 MR. FRIEDMAN: They are. They're all on one

2 building, which is located in the Historic District.

3 THE WITNESS: I believe the first sign may have
4 referenced something concerning the Fire Chief. Which would
5 not have been a political sign.

6 THE COURT: Would not have been a what?

7 THE WITNESS: A political sign, like Elect Joe
8 Smith, it referenced the Fire Chief.

9 BY MR. FRIEDMAN:

10 Q. The first sign was critical of the Fire Chief, was it
11 not?

12 A. I believe that -- it had a name for him and it asked him
13 to resign.

14 Q. Let me show you what I've marked as Plaintiff's Exhibit
15 1, which is the same photograph that you previously looked at.
16 And on that it says "Fire Chief Wild Bill McCormack Resign," is
17 that correct?

18 A. Yes, it is.

19 Q. Is that the sign you're referencing?

20 A. Yes.

21 Q. And are you telling us that that is a not a political
22 sign?

23 A. My understanding of a political sign would be a sign like

24 you referenced, "Elect Joe Smith", "Vote for Tom Riel", I don't
25 know that necessarily constitutes a political sign, the Fire

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1 Chief is not a political figure.

2 THE COURT: I can't tell from that photograph
3 whether it's a painted sign or a hanging sign; do you know?

4 THE WITNESS: It's a hanging sign, your Honor,
5 attached to the front of the building.

6 MR. FRIEDMAN: Those are all hanging signs, your
7 Honor.

8 THE COURT: All right.

9 BY MR. FRIEDMAN:

10 Q. You were, as I understand it, the Building Inspector, is
11 that correct?

12 A. I was up to a certain period of time, yes.

13 Q. You're no longer the Building Inspector?

14 A. I serve in that capacity, I'm not active in building
15 inspections or code enforcement any longer since I moved to
16 City Hall.

17 Q. But it's your testimony then, that the City of Bradford

18 would not enforce political signs within the HARB, the

19 Historical District, correct?

20 A. The City of Bradford I don't believe has ever issued a

21 citation against any political candidate that has erected a

22 political sign in the City.

23 Q. Who would make the determination as to what is or what is

24 not a political sign?

25 A. I would assume that would be the Building Inspector that

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1 is involved in that process.

2 Q. So somebody in the building inspection process made the

3 decision that these particular signs were not political signs

4 and, therefore, elected to cite Mr. Riel, is that correct?

5 A. Yes.

6 Q. And, in fact, Mr. Riel was cited for failure to apply for

7 HARB approval for these particular signs, correct?

8 A. Yes.

9 THE COURT: What do the other two signs say, is

10 there a better picture?

11 MR. FRIEDMAN: There is, your Honor.

12 THE COURT: While you're looking for that --

13 Mr. Peterson, was he cited just for the sign -- it just moved

14 there, the sign involving the Fire Chief or was he cited for

15 not getting or not running the signs by, all three signs by?

16 THE WITNESS: Your Honor, I believe he was cited

17 each time a new sign went up. At some point in the process the

18 signs were removed, the original citations were removed from

19 the District Magistrate by the Building Inspector at that time.

20 Then the signs went back up and subsequent citations were

21 issued.

22 THE COURT: Again?

23 THE WITNESS: Again.

24 THE COURT: All right, go ahead.

25 BY MR. FRIEDMAN:

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1 Q. If I'm reading these correctly, the signs indicate "How

2 Unethical is Mayor Henry; Can CEO," I believe that stands for

3 Code Enforcement Officer, "Corignani Work an Honest 8 Hours;

4 Fire Chief Wild Bill McCormack Resign." Have I read those

5 correctly, sir?

6 A. Yes.

7 Q. These are the signs for which Mr. Riel was cited at some
8 point in time, correct?

9 A. Yes.

10 Q. And, in fact, as you've indicated, he was cited because
11 somebody within the City decided that these were not political
12 signs, correct?

13 A. Yes.

14 Q. These were protest signs, correct?

15 A. The decision would have been made by that person, I don't
16 know that I can speak for him, I don't have that knowledge.

17 Q. And in fact, sir, at least one of the citations was
18 issued by CEO Corignani, is that correct?

19 A. I believe that's correct.

20 Q. And is he related to Mayor Corignani?

21 A. Yes, he is.

22 Q. How is he related?

23 A. He's her husband.

24 THE COURT: Who is Corignani, you said he issued a
25 citation?

1 MR. FRIEDMAN: That's correct, your Honor.

2 THE COURT: Let me hear it from him?

3 THE WITNESS: George Corignani is a firefighter in
4 the City of Bradford. He's a captain on the fire department,
5 he's a Code Enforcement Officer for the City and, also, the
6 Building Inspector. He is married to Michele Corignani, who is
7 the Mayor of the City of Bradford.

8 THE COURT: Would he have been the one who would
9 have issued citations for all three of those signs?

10 THE WITNESS: No, your Honor. Code Enforcement
11 Officer Silvis, Building Inspector Silvis issued the citations,
12 issued the original citations for the Fire Chief sign, and I
13 don't know the chronology, your Honor, of how these signs went
14 up. I believe there was a second citation issued after the
15 first sign went up, and then upon subsequent conversation
16 between Mr. Riel and the Code Enforcement Officer at that time,
17 who was not Mr. Corignani, but Mr. Silvis, the signs were
18 removed and those original citations were destroyed. And
19 subsequently new signs were erected following the removal of
20 those signs.

21 THE COURT: All right, go ahead.

22 BY MR. FRIEDMAN:

23 Q. In fact, the citation that was issued against Mr. Pysher

24 was issued by Fire Chief Bill McCormack, isn't that correct?

25 A. Correct.

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1 Q. Now, sir, according to what you've testified, Mr. Riel

2 should have sought HARB approval for each of these signs, is

3 that correct?

4 A. Yes.

5 Q. And that was the reason for the citation, failure to seek

6 and obtain HARB approval, correct?

7 A. Yes.

8 Q. Now, if I understand the process correctly, approval has

9 to be sought from the HARB board before the signs are put up,

10 is that correct?

11 A. Yes.

12 Q. And then after information is submitted to HARB, HARB has

13 to make a determination as to whether or not those signs can

14 get approval, correct?

15 A. Yes.

16 Q. Now, sir, referring you to the HARB ordinance, Section

17 125.15(E), the standards for determining whether or not

18 somebody gets approval are what is contained in subsection

19 (E)(1), is that correct?

20 A. For the most part, yes.

21 Q. And, in fact, that's the only thing that's in the entire

22 ordinance that has to do with standards to be applied by HARB

23 to determine whether or not a sign can be put up or not,

24 correct?

25 A. This is the section leading to signs of the very broad

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1 ordinance that discusses storefronts, doors, windows, facades,

2 design of a new structure. This is the section that relates to

3 signs in my eyes.

4 Q. But my question is, it is part of the very broad

5 ordinance, but the only thing that relates to standards for

6 signs is what's contained in subsection (E)(1), correct?

7 A. To the most part, yes.

8 Q. In fact, it gives HARB a great deal of discretion to

9 decide whether or not a sign is or should be given approval by

10 HARB, correct?

11 A. I believe that if the sign meets the HARB criteria and

12 the guidelines that the HARB utilizes, that sign permit is

13 granted.

14 Q. HARB has its own guidelines and criteria outside of

15 what's in the ordinance, is that correct?

16 A. Yes.

17 Q. And that's something that HARB decides on and those are

18 changed periodically, correct?

19 A. I don't believe there's been many changes to that, other

20 that possibly the adoption of a color chart, which came about

21 following the original ordinance. And some language about,

22 there may have been some language about sign inserts, when a

23 sign insert is changed.

24 Q. Most of these are aesthetic requirements, is that right,

25 rather than safety requirements?

1 A. Not necessarily, as it relates to signs, not necessarily.

2 HARB may not actually look at the actual design of a sign, that

3 would be looked at by someone from the Building Inspector as to

4 the adequate bracing structure and that. HARB would be more

5 concerned with appearance, as it fits into the Historic

6 District.

7 Q. So HARB has, if I understand correctly, 45 days in which

8 to review and make its decision as to whether or not it meets

9 HARBS requirements, correct?

10 A. Yes.

11 Q. And after 45 days, then HARB reports to City Council on

12 that particular sign, is that correct?

13 A. Yes.

14 Q. And then City Council is supposed to put that matter on

15 its next meeting agenda, correct?

16 A. I'm not certain if the ordinance reads that way right

17 now. I believe an amendment to that ordinance will require

18 that. Traditionally, that occurs, our HARB meetings are

19 pre-scheduled on the third Thursday of every month. And our

20 City Council meets on the fourth Tuesday of every month. So

21 normally, unless there is extenuating circumstances, that is

22 acted on by City Council within five days of HARB approval.

23 Q. According to Section 125.12 of the current ordinance, a

24 report is prepared and submitted to City Council, is that

25 correct?

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1 A. Yes.

2 Q. And then City Council places that matter on its agenda

3 for a meeting, is that correct -- let me flip it back so you

4 can read the whole thing --

5 A. Is that the existing ordinance?

6 Q. Yes, it is.

7 A. Okay. You can go to the next page.

8 Q. Okay. And subsequent to that meeting, I'm looking at

9 subsection (J), City Council has five days after that meeting

10 to make a decision and to advise the applicant, correct?

11 A. That's correct. It normally has acted on that at that

12 meeting. I've never seen an instance where Counsel has not

13 acted on it at the actual meeting.

14 Q. So, according to that criteria, the applicant makes

15 application, the HARB board has 45 days to submit its report to

16 City Council. City Council places it on the agenda for the

17 next meeting, and then City Council has five days after the

18 meeting to notify the applicant of approval, is that correct?

19 A. That's the timeframes spelled out in there. It does not
20 take that long for that process to occur.

21 Q. And then after the applicant receives HARB approval, he
22 or she then has to make application for a permit under Section
23 178, is that correct?

24 A. If it relates to signage issues, yes.

25 Q. And, please, all my questions relate to signs, we're not

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1 dealing with structures today, just signs, I don't mean to
2 confuse you.

3 A. All right.

4 Q. But after approval is given by City Council, then the
5 applicant can make application for a building permit under
6 Section 178, which is applicable to the Historical District and
7 to the non-Historical District, correct?

8 A. Yes.

9 Q. And under Section 178 as it exists, there are no time
10 lines for a decision on that particular application, correct?

11 A. That's correct.

12 Q. That can come in a matter of days, it can come in a

13 matter of weeks, it can come in a matter of months, correct?

14 A. The process does not take months or even weeks. Normally

15 a permit is turned around within to three to five days at the

16 very most.

17 Q. That's been your practice, is that correct?

18 A. Yes, sir.

19 Q. But that's not what the ordinance says?

20 A. The ordinance doesn't have a timeframe, I'm just stating

21 the traditional turnaround time within our department is three

22 to five days.

23 Q. So if I, as a resident or building owner in the

24 Historical District of Bradford want to put up a sign such as

25 this, it can take months before I get approval?

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1 THE COURT: The record won't be clear on that, such

2 as what?

3 BY MR. FRIEDMAN:

4 Q. Such as the signs placed by Mr. Riel, it can take months

5 before I go through the entire process and get approval,

6 correct?

7 A. It could, but it wouldn't.

8 Q. In fact, sir, if you put up a sign saying "Stop The War

9 In Iraq," the war could be over before I ever got approval to

10 put that sign up, isn't that correct?

11 A. I believe that's incorrect.

12 Q. What if the war only lasted for 30 days?

13 A. Depending on the time of your application to HARB, it can

14 go to Council as quickly as five days. It could come in the

15 day of the HARB meeting with your application and it's approved

16 that night, and five days later City Council acts on it, and

17 the Building Inspector then acts on the building permit within

18 three to five days, the timeframe could be as little as eight

19 to ten days.

20 Q. What if the war's over in five days, I haven't had a

21 chance to express my opinion on it, have I?

22 A. In that situation more than likely no, it could not

23 occur.

24 Q. And in fact, if the election was in five days and it was

25 construed not to be a political sign, I wouldn't be able to

1 express myself on my property by a sign before the election was
2 over, would I?

3 A. I believe I stated that the City of Bradford has not --
4 has not taken action on political signs that are erected, any
5 type of size within the City of Bradford concerning an
6 election.

7 Q. Has the City of Bradford issued any written policy or
8 recommendation concerning what is or what is not a political
9 sign?

10 A. I don't believe there are, sir.

11 Q. Now, sir, if I understand the scheme under 178 all
12 encompassing sign ordinance, there is a 30-day time limit for
13 any temporary signs, is that correct?

14 A. Correct.

15 Q. So after 30 days I have to pull my sign, my protest sign
16 off of my building, is that correct, and get re-approval?

17 A. If you would apply under the terms of a temporary sign
18 for a certain time, yes. If you meet the exemption, you're
19 not, that doesn't apply at all.

20 Q. And, in fact, under Section 178-9, that indicates, does
21 it not, Mr. Peterson, that "all rights and privileges acquired

22 under the provisions of this chapter or any amendment thereto

23 are mere licenses revocable at any time by the Building

24 Officer, and all such permits shall contain this provision."

25 Have I read that correctly?

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1 A. Yes.

2 Q. So the Building Inspector has the right to revoke a

3 permit at any time, correct?

4 A. Yes, with just cause.

5 Q. Is that what it is for just cause?

6 A. I don't know that we have ever revoked a sign permit for

7 any other reason than that.

8 Q. Are there any standards in here concerning just cause?

9 A. Just cause to me would be the sections that relate to the

10 safety considerations for the sign and that would be it alone.

11 Q. So we're to assume that even though it doesn't even say

12 just cause in it, you say it may be revoked?

13 A. Just as a matter of standard practice in the City of

14 Bradford, we do not remove signs for no reason.

15 Q. Mr. Peterson, going back to political signs, you said

16 that political signs are not subject to citation in the City of

17 Bradford, correct?

18 A. No, we have not enforced that in -- I don't know, I've

19 been with the City for 32 years, I'm not aware that City has

20 ever --

21 THE COURT: Hang on, I'm confused. Is the question

22 whether or not political signs are exempt under 178 or were you

23 referring to 125?

24 MR. FRIEDMAN: I'm referring to the practice of the

25 City of Bradford.

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1 THE COURT: I apologize. Ask the question again and

2 start the answer.

3 BY MR. FRIEDMAN:

4 Q. In the City of Bradford, according to the practices of

5 the City of Bradford, do you cite people for putting political

6 signs up on their buildings?

7 A. No.

8 Q. Regardless of the size of those signs, they are not

9 cited, is that correct?

10 A. No. That's correct, yes.

11 Q. That's correct. So if I take a block of that wood out of
12 that wall and put on there "Vote For Mayor Corignani", put it
13 up on my building, that's okay?

14 A. You would not receive a citation.

15 Q. Regardless of how it's attached to the building, correct?

16 A. Correct.

17 Q. If I took that piece of block out and didn't write
18 anything on it at all and just hung it from the outside of my
19 building, would I be cited?

20 A. That situation has never occurred, I guess I can't answer
21 that. I don't know the intent of it. Would that be a sign,
22 I'm not sure, there's nothing on it, I don't know it would
23 constitute being a sign. It may be something attached to a
24 building, but if it doesn't have a message on it, I'm not
25 certain it would constitute being a sign.

1 Q. So the issue to determine whether or not I can hang that
2 on my building is what message is conveyed on it?

3 A. Not what message, if there's anything on it.

4 Q. So it doesn't matter what it says in the message, the

5 only question is is there writing on that block?

6 A. That would be my indication of a sign, I believe that's

7 in the sign definition.

8 Q. What is your definition of a sign?

9 A. Including every sign, billboard, ground sign --

10 Q. I don't mean to interrupt you -- your Honor, I'm

11 referring to Section 178-2. Now, sir, that section defines

12 sign as including every sign, is that correct?

13 A. Yes.

14 Q. So we know if we're reading that, that a sign includes

15 every sign?

16 A. Yes.

17 Q. Okay. Go ahead, you can read the rest and then tell me

18 whether or not that constitutes a sign?

19 A. "Every sign, billboard, ground sign, wall sign, roof

20 sign, illuminated sign, projecting sign, temporary sign,

21 marquee, awning, canopy and street clock, and shall include any

22 announcement, declaration, demonstration, display, illustration

23 or insignia used to advertise or promote the interests of any

24 person when the same is placed out of doors in view of the

25 general public."

1 Q. So can we agree that that wood block would not constitute
2 a sign because it doesn't have anything written on it?

3 A. Yes, I believe that does not constitute being a sign.

4 Q. If Mr. Riel then could hang that outside of his building
5 in the Historic District of Bradford and not have to apply
6 either for HARB approval or for a sign permit under Section
7 178?

8 A. He may -- if he's altering the external appearance of the
9 structure, then it would still need HARB approval. It may not
10 need a permit, but HARB would need to approve it.

11 Q. HARB has to approve everything that hangs from a
12 building?

13 A. Anything to do with the external appearance, any change
14 to the external appearance of the building. If he hung that,
15 that would be an external change.

16 Q. Let's assume that that's consistent with the aesthetics
17 of the Historical District. Then it's your testimony he does
18 not have to go further than that, he just has to get HARB
19 approval, that ends the debate on that?

20 A. This is for a blank piece of --

21 Q. A piece of wood which probably measures, I don't know,

22 three feet by three feet, four feet by four feet, doesn't

23 matter, does it?

24 A. No. In my estimation it would need to go no farther than

25 HARB approving it, for it would be external appearance of the

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1 building and surrounding architecture.

2 Q. So if I understand the City's position correctly, it

3 depends when one seeks a permit for a sign, it depends on what

4 is on the sign, correct?

5 A. No.

6 Q. It doesn't matter what message is conveyed on that sign?

7 A. No.

8 Q. All right. I come to you, sir, as a building owner in

9 the City of Bradford and I have a piece of wood that I want to

10 use for a sign that's three feet by three feet, nine feet

11 square, okay?

12 A. Yes.

13 Q. And is it okay to have a sign in the City of Bradford

14 that is not in English?

15 A. We have no regulation on content, other than that very

16 limited section in the traffic, relating to traffic hazards.

17 Q. I want to hang this from my building and written on there

18 is something in Chinese. Am I allowed to put that up or do I

19 have to get a sign permit?

20 A. Three feet by three feet --

21 Q. Nine square feet?

22 A. If it was a noncommercial message, I would imagine we may

23 need to get a Chinese interpreter to see what the sign actually

24 said. If it was obscene under the federal guidelines and what

25 that message actually was.

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1 Q. I want you to assume for a moment --

2 A. We're making assumptions.

3 Q. I want you to assume it's not obscene?

4 A. Okay.

5 Q. What you're telling the court is you would have to get an

6 interpreter to read that sign and determine whether or not it

7 fits within the exemptions of 178-15, is that correct?

8 A. If it was a noncommercial message, it would be allowed.

9 If was a commercial message, then it may, it would need a
10 permit.

11 Q. All right. Let's say that the sign, instead of being
12 nine square feet, is 14 square feet. Do we still have to get
13 our interpreter?

14 THE COURT: Say that again.

15 BY MR. FRIEDMAN:

16 Q. Sure. If the sign is 14 square feet instead of nine
17 square feet, do we have to have an interpreter?

18 A. I guess I would, only to make sure again it's not an
19 obscene message that's being displayed.

20 Q. Assume for the purpose of all my questions that this not
21 obscene, okay. If we get our interpreter in and he says to you
22 that sign says "Vote For Fred Smith," then he doesn't need a
23 permit at all, correct, because it's political?

24 A. Correct.

25 Q. If the interpreter says instead of that, it is a sign

1 that says "Get Out Of Iraq," that would need a permit because

2 that is not political, is that correct?

3 A. Correct.

4 Q. If the sign said "Joe Blow Architect," then that sign

5 would be okay because under subsection (E), it's okay to have

6 the architect's name on the sign, is that correct?

7 A. What dimensions are we talking about?

8 Q. I said it was 14 square feet.

9 A. Fourteen square feet -- if it was the architect involved

10 upon work a construction site?

11 Q. Yes.

12 A. Then it would be exempt.

13 Q. But if it were a construction site, instead of the

14 architect's name it had my name as the owner, then it would not

15 be allowed under that, it would have to have a permit, correct?

16 A. This allows an exemption for the architect, engineer and

17 contractors, placed at a work site.

18 Q. If the Chinese interpreter says to you that says "Phil

19 Friedman, Owner," then that would not fit under that exemption,

20 would it?

21 A. If Phil Friedman, Owner, was listed there along with the

22 architect and the engineer and the contractor on the project, I

23 believe it would qualify for the exemption.

24 Q. I'm not listing anybody other than myself, I'm not

25 putting in the architect's name and the interpreter says that

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1 sign says "Phil Friedman, Owner," the exemption doesn't apply,

2 does it?

3 A. No, it does not.

4 Q. So I have to get a permit, correct?

5 A. Yes.

6 Q. Sir, looking at the exemption (A), real estate signs,

7 eight square feet, if my sign on there and the Chinese

8 interpreter said it now says instead of "Joe Blow, Architect,"

9 it says "Real Estate For Sale," it's not exempt, is it, because

10 it's too big?

11 A. We're at the 14 square feet sign?

12 Q. Yes.

13 A. It would not be exempt.

14 Q. Are the real estate signs that you're referring to the

15 type that we see out in the neighborhoods that are stuck in the

16 ground that says "House For Sale?"

17 A. I believe that was the intent of this section of the

18 ordinance, yes.

19 Q. Does it only apply to professionally printed or signs

20 that come from professional realtors?

21 A. No.

22 Q. So it applies to anybody who writes on that sign

23 "Building For Sale, Lot For Sale," is that correct?

24 A. As long as it's on a sign of the premises that's for

25 sale, yes.

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1 Q. What if on that sign instead of "House For Sale," it says

2 "House Contents For Sale," would a permit have to be obtained,

3 would that be exempt, also?

4 A. That's not a real estate sign, it's not advertising the

5 sale or rental or lease of the premise.

6 Q. So a permit would have to be obtained?

7 A. Yes.

8 THE COURT: Excuse me, somebody is saying yes back

9 there, I don't know where that's coming from, don't do it.

10 BY MR. FRIEDMAN:

11 Q. If we go to exemption two, which says "professional
12 nameplates not exceeding one square foot in area," is that
13 correct?

14 A. Yes.

15 Q. If I bring you in a one foot square sign in Chinese again
16 and the interpreter says that says "Phil Friedman, Lawyer,"
17 that would be exempt, would it not?

18 A. Yes.

19 THE COURT: Mr. Friedman, we're going to take a
20 short break.

21 (Recess from 2:40 p.m.; until 3:00 p.m.)

22 THE COURT: All right, Mr. Friedman.

23 MR. FRIEDMAN: Thank you, your Honor.

24 BY MR. FRIEDMAN:

25 Q. Mr. Peterson, the bottom line on this is the exemptions

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1 from the permitting scheme throughout the City of Bradford are
2 based upon what is in, what is on the sign, the message that's
3 on the sign, correct?

4 A. To a degree.

5 Q. And, in fact, regardless of the size of the sign and the
6 location, as long as it is a political sign as defined by the
7 City of Bradford, that is an exemption, also, correct?

8 THE COURT: Say that again.

9 BY MR. FRIEDMAN:

10 Q. That was probably a little unclear. A political sign as
11 you've defined it for us in the City of Bradford, is exempt
12 from the permitting requirements regardless of where it's
13 located and how large it is, correct?

14 A. Yes, there are provisions within the City of Bradford's
15 Zoning Code that exempt political signs.

16 Q. But it's exempt under the permitting scheme of Section
17 178, correct?

18 A. It would be exempt under, the Zoning Code would make
19 those types of signs exempt.

20 THE COURT: Let me ask a question here if I could
21 jump in. I'm confused on this point. Under 178(I), the
22 exemption for noncommercial signs not exceeding 12 foot square
23 placed upon private property by the owner or occupant of said
24 property. Aren't political signs merely a subset of
25 noncommercial signs; in other words, otherwise stated, does the

1 term noncommercial sign suck up, in your estimation, a
2 political sign, however that may be defined?

3 THE WITNESS: Yes.

4 THE COURT: All right. Go ahead.

5 BY MR. FRIEDMAN:

6 Q. But the political signs are not subject to the 12 square
7 foot requirement of subsection (I), is that correct?

8 A. They would not necessarily be subject to that, no.

9 Q. And in fact, the sign that Mr. Lanzillo showed you --
10 that's Defendant's Exhibit B -- and we were having difficulty
11 reading it, but it talks about making City Council a Democratic
12 Forum again, you defined that as a political sign, correct?

13 A. The signs states, I believe '04, Riel For Mayor --
14 political sign.

15 Q. That's a political sign. So even though this sign may be
16 30 square feet or more, it would be exempt from the permitting
17 requirement, correct?

18 A. It is. All political signs are exempted under the City
19 of Bradford Zoning Code.

20 THE COURT: Are they exempted from 178 and 125?

21 THE WITNESS: In enforcement issues they are, your
22 Honor, because I don't believe anybody has ever been cited for
23 the installation of political signs. Due to the fact primarily
24 they are exempted, they are an exempted sign under the
25 provisions of our Zoning Code.

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1 THE COURT: Forgive me, so in practice, then, in
2 practice are you saying that, for instance, with respect to
3 178(I) -- let me ask a broader question. That if you are a
4 noncommercial sign, but you are a nonpolitical sign, if you are
5 greater than 12 feet and you are placed upon private property,
6 you must go through the permitting requirements of 178, is that
7 right?

8 THE WITNESS: Yes.

9 THE COURT: But are you saying to me that if you are
10 a noncommercial sign, but you are a political sign, you are
11 completely outside the orbit of 178 at all and you neither need
12 to be permitted nor you need to be exempted because you're not
13 covered, in practice?

14 THE WITNESS: In practice, that's correct.

15 THE COURT: All right.

16 BY MR. FRIEDMAN:

17 Q. So the reason that Mr. Riel was cited for the signs
18 critical of Bradford city government people was because the
19 City determined that that was not a political sign?

20 A. I believe that to be correct, I believe the citation was
21 issued for failure to go to HARB for appropriate review.

22 Q. Would you agree with me, sir, that the primary purpose of
23 HARB is aesthetic?

24 A. Yes.

25 Q. And the primary purpose of 178 is safety?

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1 A. Yes.

2 Q. And would you agree with me, sir, that the safety
3 considerations are precisely the same whether the sign says
4 "Vote For Joe" or "Stop The War in Iraq," or "Hot Dogs By Joe"?

5 A. Yes.

6 Q. So the distinction we're making in determining what signs
7 should be given a permit and what signs are exempt, is what
8 message is on a particular sign, not really what the sign is

9 constructed of or how it's placed on the building?

10 A. Traditionally, most political signs that are erected

11 within our municipality are the very small ground type signs

12 that you punch into the ground with your foot, constructed of

13 wire and some type of fabric cardboard, whatever, those are the

14 traditional political signs. Political signs, also,

15 traditionally are very short-lived in nature. They crop up and

16 they disappear.

17 Q. That wasn't my question. My question was you're basing

18 the determination as to what is exempt or not exempt by what is

19 on a particular sign, correct; "Vote For Joe," exempt. "Joe's

20 Hot Dogs," nonexempt. "Stop The War In Iraq," nonexempt. "Joe

21 For City Council," exempt, correct?

22 A. Political signs are exempt under our Zoning Code,

23 correct.

24 Q. So the question I just asked you the answer is correct?

25 A. Yes.

1 Q. What provision of the Zoning Code are you referring to?

2 A. I don't have the Zoning Code here in front of me. There

3 are definitions contained within the City of Bradford Zoning
4 Code.

5 Q. Did somebody suggest the Zoning Code to you during the
6 recess?

7 A. No, they did not.

8 Q. Sir, I want to show you what's previously been marked as
9 Defendant's Exhibit R, which is the carwash; that is not within
10 the Historical District, is that correct?

11 A. Correct.

12 Q. Has Moonan's obtained a permit for that particular sign?

13 A. I'm not certain.

14 Q. So if I told you that they had not, you would not know
15 whether to agree or disagree with me, is that correct, you
16 don't know?

17 A. I don't know without looking through City records.

18 Q. Do you have those records with you today?

19 A. No, I do not.

20 Q. The first people that were ever cited for failure to
21 obtain HARB okay or authorization were the plaintiffs in this
22 case, is that correct?

23 A. That's correct.

24 Q. And, in fact, Mr. Riel received five citations, is that

25 correct?

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1 A. I don't have the actual count in front of me.

2 Q. And the citations were based upon the signs, which you

3 you've already referred to, criticizing people in government,

4 correct?

5 A. I believe it was in regard to signs that were erected on

6 his building without HARB approval.

7 Q. Those were the signs that we've already taken a look at,

8 correct?

9 A. Yes.

10 Q. If I were to show you various signs throughout the

11 Historical District, would you know whether or not these signs

12 had permits?

13 A. Some I may be familiar with, some I may not. I don't

14 have that information in front of me.

15 Q. Let me show you what I've marked as Plaintiff's

16 Exhibit 3, are you familiar with that building at 22 Congress

17 Street?

18 A. Yes, I am.

19 Q. Do you know whether or not the owner of that building has
20 obtained permits for those signs?

21 A. No, I do not.

22 Q. That's within the Historical District, is that correct?

23 A. Yes.

24 Q. Do you know whether or not the owner of that building
25 obtained HARB approval?

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1 A. I do not know that.

2 Q. Who would know that?

3 A. That would need to be researched through the HARB
4 chairman and the secretary of the HARB board.

5 Q. That would be information that would be available to the
6 public, correct?

7 A. Correct.

8 Q. Let me show you what I've marked as Plaintiff's Exhibit
9 16, this is a building at 153 Main Street, are you familiar
10 with that building?

11 A. Yes, I am.

12 Q. Do you know whether or not permits were obtained for

13 those signs?

14 A. No, I do not.

15 Q. Those are signs advertising beer, the cost of beer?

16 A. Yes.

17 Q. And these are signs located in the Historic District of

18 the City of Bradford, is that correct?

19 A. There have been changes to the historic map, I'm not

20 certain if that structure is in or out currently without seeing

21 the map.

22 Q. Does that help you at all?

23 A. It appears that it's in, that it's within the Historic

24 District.

25 Q. Okay. If you don't know, that's fine. You said it was

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1 within the Historic District?

2 A. I said it would appear to be here, correct.

3 Q. I'm sorry, I didn't hear you.

4 THE COURT: Mr. Friedman, I don't know how many more

5 of these you have, is it your intention by way of proffer to

6 offer evidence through some other witness or exhibits that

7 these other properties in fact are not permitted?

8 MR. FRIEDMAN: I will do that, your Honor. I

9 thought we might be able to save time, but he doesn't know.

10 THE COURT: He doesn't know.

11 MR. FRIEDMAN: Exactly.

12 BY MR. FRIEDMAN:

13 Q. The one final question that I have, sir, is you spoke on

14 direct examination about negotiations with the American Civil

15 Liberties Union regarding modification of the sign ordinances,

16 is that correct?

17 A. Yes.

18 Q. Did you have any involvement at all with those

19 negotiations?

20 A. I was involved at the time in the original letter that

21 went to Mr. Riel at the time concerning his sign. Beyond that,

22 all negotiations were handled through our Solicitor.

23 Q. So the solicitor and counsel for the ACLU worked on those

24 particular amendments, is that correct?

25 A. I believe that's correct, yes.

1 Q. You had no particular involvement with the attorney for
2 the ACLU?

3 A. I don't believe so, I'm not sure of any correspondence
4 that may have been directed to me. If it was, it would have
5 been turned over to our Solicitor.

6 MR. FRIEDMAN: Thank you, sir, those are all the
7 questions I have, your Honor.

8 THE COURT: All right. Mr. Lanzillo.

9 REDIRECT EXAMINATION

10 BY MR. LANZILLO:

11 Q. Mr. Peterson, I have just a few follow-up questions. I
12 want to understand your answers regarding political signs here.
13 You mentioned a Zoning Ordinance, is that correct?

14 A. Yes, I did.

15 Q. And it's your understanding that political signs are
16 exempt under the Zoning Ordinance?

17 A. Yes.

18 Q. Is it your interpretation that somehow the Zoning
19 Ordinance trumps these two sign ordinances or takes precedent
20 over the two sign ordinances?

21 A. I'm not really certain what trumps what.

22 Q. As you read the sign ordinances themselves, Chapter 178
23 and Section 125.15(E) of HARB ordinance, are political signs
24 exempted from the requirements?

25 A. They are not exempted in those two ordinances, no. My

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1 knowledge of the exemption would come from serving as the
2 Zoning Officer for the City and knowing they're exempt under
3 zoning provisions.

4 Q. And in practice, as I understand your testimony, these
5 political signs that are punched in the ground, temporary
6 signs, have not been the subject of enforcement action, to your
7 knowledge?

8 A. To the best of my knowledge, no.

9 Q. There were some questions regarding properties within the
10 Historic District and whether they have received HARB approval
11 and a permit. Did the City recently receive a request for
12 information under the public records law regarding properties
13 and sign permits within the Historic District?

14 A. Yes.

15 Q. What period of time was requested by the request?

16 A. It was a five-year timeframe, some date in April of 1999
17 through April of 2004.

18 Q. Does that capture all of the sign permits?

19 A. It would not necessarily capture a sign permit that may
20 have been issued as part of an actual building construction
21 permit as well. That's a general computerized printout of sign
22 permits. If it was incorporated into a new construction of a
23 building and particularly one outside of the Historic District,
24 it may be referenced on the building permit application as
25 well, I'm just not certain regarding that.

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1 Q. Focus on the Historic District because that's what we're
2 talking about here. Other than appearing with respect to a
3 permit in the HARB files, is there anyplace else you would find
4 permits regarding signs; you mentioned the building permits, is
5 that or is that not an area where you would find references to
6 signs?

7 A. A sign could be incorporated within an application
8 received for an actual building permit for construction
9 purposes. And it may not be designated or spit out of the

10 computer so to say by category XO8 or whatever it is that

11 prints out a sign permit if it's incorporated as part of an

12 actual building permit that was issued. I'm just not certain

13 in that situation, the one sign in reference is a new

14 construction.

15 Q. The request for information, what specifically was

16 requested, was it the actual permits or something else?

17 A. A record of sign permits that were generated by the City

18 of Bradford for that five-year timeframe. And I explained to

19 the requester, you know, this a computerized list and there are

20 certain situations that that would not apply to.

21 Q. And who requested the information?

22 A. Mr. Pysher.

23 Q. How do you handle a situation where a sign has an insert?

24 A. Sign inserts do not require a new permit to be issued,

25 and a paint over of a sign does not require a permit, new

1 permit to be issued. However, if it would be a paint over of a

2 sign in the Historic District, that would need to go to HARB

3 for a certificate of appropriateness. But outside of the

4 Historic District, if a sign is repainted, that doesn't require

5 a permit, they're not doing anything to the sign.

6 Q. Now, is it possible that there are signs erected within

7 the Historic District that have not received HARB approval or a

8 permit?

9 A. Yes, it's possible. It's possible that there are signs

10 all over the City of Bradford that may have been erected

11 without a permit. Unfortunately, we're basically a complaint

12 driven municipality as practically any municipality is today.

13 Faced with limited means of enforcement. I mean, we use to

14 have sidewalk inspectors, we used to have various inspectors to

15 do this. Our Code Enforcement people and Building Inspectors

16 cover a lot of ground in the course of a day. So their eyes

17 and ears are limited, and they may or may not see a new sign go

18 up. Oftentimes we rely on a complaint from somebody that has

19 seen something going on and calls in to Code Enforcement or to

20 City Hall to check on it.

21 Q. Do you know if anyone complained about Mr. Riel's signs?

22 A. Yes, they did.

23 Q. Who?

24 A. I believe it was the chairman of the HARB board.

25 THE COURT: Chairman of who?

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1 THE WITNESS: Chairman of the HARB board.

2 BY MR. LANZILLO:

3 Q. Now, you mentioned Code Enforcement people have a lot of
4 responsibilities. In addition to the sign ordinances, what do
5 the Code Enforcement personnel have responsibility for?

6 A. They enforce all building construction codes, they handle
7 inspections of rental properties, inspection of properties for
8 sale. They respond to every complaint generated within the
9 City. Be it tall grass to dog feces, to anything else, any
10 complaint that comes into any department of the City is handled
11 through our Code Enforcement office. And we cover not only the
12 City of Bradford, but Bradford Township, and we have two Code
13 Enforcement officers.

14 MR. LANZILLO: That's all I have, thank you.

15 THE COURT: Hang on one second, I've got a couple
16 questions.

17 THE COURT: Mr. Peterson, so I'm clear again, it's
18 your position and I take it the City's position that political

19 signs, however you define that term, political signs are not

20 covered at all under 178 or 125, is that right?

21 THE WITNESS: Yes.

22 THE COURT: All right. And do I understand that to

23 the extent that Bradford imposes any restrictions on political

24 signage, one must look to the Zoning Ordinance for those

25 restrictions, is that right?

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1 THE WITNESS: Correct.

2 THE COURT: With respect to, and by the way I

3 haven't looked at the Zoning Ordinance because I didn't frankly

4 know it was going to be part of this matter, is the term

5 political signage or political sign defined under the

6 ordinance, do you know?

7 THE WITNESS: I don't believe there's an actual

8 definition, your Honor.

9 THE COURT: All right. In any event, with respect

10 to political signage, as you understand what that might be, is

11 there anything in the Zoning Ordinance that would restrict, for

12 instance, the size or placement of political signs on private

13 property?

14 THE WITNESS: There are size restrictions listed
15 within the Zoning Code, your Honor.

16 THE COURT: All right. Do you know off the top of
17 your head, are they similar, for instance, the 12 square foot
18 signage or noncommercial signs here, can you give me some
19 summary or flavor as to what it's all about?

20 THE WITNESS: I believe the regulations get into
21 more detail on square footage of signs, say signs in commercial
22 districts, manufacturing districts, signs in some residential
23 districts. Again, referencing setbacks, maximum size, height,
24 visibility issues for the motoring public and stuff like that.

25 THE COURT: Thank you. All right, go ahead, Mr.

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1 Friedman.

2 MR. FRIEDMAN: Just to follow-up on that.

3 RECROSS-EXAMINATION

4 BY MR. FRIEDMAN:

5 Q. Are there special rules in the Zoning Ordinance for
6 political signs?

7 A. Zoning Ordinance exempts political signs.

8 Q. So under the Zoning Ordinance political signs are not
9 covered at all?

10 A. They're exempted.

11 Q. So they're exempt under all the ordinances of the City of
12 Bradford?

13 A. They're technically not exempt under the other two
14 ordinances. They are exempt under our Zoning Ordinance.

15 Q. So when you say technically, by practical application
16 they are exempt under the other two ordinances?

17 A. We have not enforced any action against political signs.

18 Q. And your definition of political sign is campaigning for
19 public office?

20 A. That's my interpretation, yes, sir.

21 Q. Is that the City's interpretation?

22 A. I believe that would be the interpretation of our
23 Building Inspectors as well.

24 Q. Would that decision be made by the Building Inspector
25 handling that particular sign?

1 A. Yes.

2 Q. You said that you're basically complaint driven, is that
3 correct?

4 A. We are to a large degree complaint driven, yes. The Code
5 Enforcement officers are out in the community on a daily basis.
6 They see what they can see. But we do receive a number of
7 complaints about any given situation. Be it a pothole or
8 anything else, that's the nature of being involved in municipal
9 government. We do receive a number of complaints daily, not
10 just relating to that.

11 Q. The head of government in Bradford is the Mayor, is that
12 correct?

13 A. That is correct.

14 Q. That is Mayor Corignani, correct?

15 A. Corignani, yes.

16 Q. And her husband is the Code Enforcement officer, correct?

17 A. Yes, he is.

18 Q. He's also employed by the City?

19 A. He's been employed by the City of Bradford for in excess
20 of 30 years.

21 Q. And the Fire Chief, Mr. McCormack, is employed by the
22 City, correct?

23 A. Yes.

24 Q. And Mayor, excuse me, Attorney Greg Henry, he's not the

25 Mayor anymore, correct?

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1 A. He hasn't been the Mayor for quite sometime.

2 Q. But he is also employed by the City as an assistant City

3 Solicitor, is he not?

4 A. He has the title, I believe he's special assistant to the

5 Solicitor.

6 Q. Special assistant to the Mayor?

7 A. No.

8 Q. To the Solicitor?

9 A. Yes, special counsel.

10 Q. So the first person to be charged under this ordinance

11 was the person who put up signs criticizing Mayor Henry, CEO

12 Corignani and Chief McCormack, is that correct?

13 A. I'm not certain of the timeframes, sir. I believe

14 actually Mr. Pyscher may have been cited before Mr. Riel. I

15 don't have the chronology of that in front of me. But I

16 believe that may have been the situation. And that

17 precipitated the sign concerning the Fire Chief. I'm not
18 certain, I don't have that information.

19 Q. Mr. Riel and Ms. Thompson are cited for these particular
20 signs criticizing those officials, correct?

21 A. They're cited for the signs in that building that they
22 did not get HARB approval for.

23 MR. FRIEDMAN: Thank you, sir, that's all I have,
24 your Honor.

25 THE COURT: Do you have anything else?

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1 MR. LANZILLO: Nothing further, your Honor.

2 THE COURT: I have one or two other questions, I
3 guess I'm still confused. I thought you told me that political
4 signage was controlled by certain provisions of the Zoning
5 Ordinance?

6 THE WITNESS: Yes.

7 THE COURT: And somewhere within the Zoning
8 Ordinance does it tell a perspective sign putter upper who's
9 going to put up a political sign, how big the sign may be and
10 where he or she may place it?

11 THE WITNESS: I'm not exactly certain on that, your
12 Honor. If it gets into that because it exempts those signs,
13 I'm not certain then.

14 THE COURT: See that's what I'm confused on. If the
15 Zoning Ordinance exempts political signage and if 178 and 125
16 exempt, in your view, political signage, then nothing covers
17 political signage, is that right?

18 THE WITNESS: As a practical matter of application,
19 political signs have not been cited or regulated by the City.

20 THE COURT: I don't know if this is true or not, but
21 is that because, to your knowledge, there is no ordinance code
22 or body of regulations that would specifically address them,
23 like 178 and 125 addresses exempted and nonexempted signs?

24 THE WITNESS: Correct.

25 THE COURT: And with expect to those three signs we

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1 had up on the screen here a minute ago, one involved Mr. Henry,
2 the other one involved I think the Fire Chief, I can't remember
3 what the other one involved. Tell me if I have this right. If
4 instead of those three signs -- who does the record reflect put

5 those up?

6 MR. FRIEDMAN: Mr. Riel.

7 THE COURT: If instead of those three signs, the

8 three signs were Mr. Riel is going to run for Mayor, vote for

9 me. And then a second similar sign and a third similar sign,

10 all directed at promoting a Riel candidacy, would he have been

11 cited?

12 THE WITNESS: No. He was not -- I'm not certain if

13 there were actually Riel for Mayor signs on that building.

14 THE COURT: I'm not saying that there were, I'm

15 trying to get a sense as to how would you envision the

16 enforcement of the statute, would that have been a political

17 sign?

18 THE WITNESS: Yes.

19 THE COURT: My last question is, so I'm clear on the

20 concept -- that the City has for a political sign. In your

21 view, in order to qualify as a political sign, does the sign

22 have to espouse the political interests or hopes of -- let me

23 say it again. Is a political sign only a sign that espouses a

24 particular person for office, is it that narrow?

25 THE WITNESS: The exemption does not get into that

1 criteria. That would be the criteria that I would apply to a
2 political sign. That would be somebody with a candidacy for
3 office.

4 THE COURT: Someone that is an active candidate for
5 office?

6 THE WITNESS: For an office.

7 THE COURT: Whereas, if someone who was not an
8 active candidate for office was criticized a sitting member of
9 City Council or the Mayor or someone else as to their political
10 performance, that in your view would not be a political sign?

11 THE WITNESS: Correct.

12 THE COURT: All right. That's all I have, thank
13 you.

14 MR. LANZILLO: Your Honor, we call Merle Silvis to
15 the stand.

16 THE CLERK: All right. Sir, would you please state
17 your name and spell it for the record?

18 THE WITNESS: Merle, M-e-r-l-e, Silvis, S-i-l-v-i-s.

19 MERLE SILVIS, DEFENSE WITNESS, SWORN

20 DIRECT EXAMINATION

21 BY MR. LANZILLO:

22 Q. Mr. Silvis, would you state your full name and address

23 for the record?

24 A. Merle Silvis, 21 Harrisburg Run, Bradford, Pennsylvania.

25 Q. Are you employed, sir?

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1 A. I'm employed by the City of Bradford.

2 Q. In what capacity?

3 A. As a firefighter, I've been a firefighter for 31 years.

4 I have been the current Code Administrator for two-and-a-half

5 years.

6 Q. What is a Code Administrator?

7 A. It's a Code Enforcement officer, Building Inspector.

8 Inspect around property, disclose housing sales.

9 Q. How many Code Enforcement officers are there in the City

10 of Bradford?

11 A. Two.

12 Q. And what are your responsibilities, what ordinances are

13 you charged with enforcing, what responsibilities do you have

14 in general?

15 A. Basically, City ordinances, code ordinances, property and
16 maintenance ordinances. International construction code
17 ordinances.

18 Q. Do you have any special training in Code Enforcement?

19 A. Yes.

20 Q. What is that?

21 A. I've attended schools to be certified and --

22 THE COURT: You've got to keep your voice up just a
23 little bit.

24 THE WITNESS: Also, on-the-job training.

25 BY MR. LANZILLO:

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1 Q. Now, did you issue some of the citations --

2 A. Yes, I did.

3 Q. That are at issue in this case in question. Those
4 citations were issued to the three plaintiffs?

5 A. I only issued to the two plaintiffs.

6 Q. Okay. And who were they?

7 A. Thomas Riel and Diane Thompson.

8 Q. Why did you issue the citations to Mr. Riel and Ms.

9 Thompson?

10 A. Our office received a complaint on the signs being posted

11 by the HARB board chairman, I investigated and I did find a

12 sign on the building. At which time I sent Mr. Riel and Ms.

13 Thompson a letter notifying them, gave them a copy of the

14 ordinance, that they would need to apply to the HARB board in

15 order to put these signs up. They were given a time limit, the

16 time limit expired and they were issued a citation.

17 Q. Is each sign a separate violation?

18 A. Can be, yes.

19 Q. Let me show you what we've marked as Defendant's Exhibit

20 G --

21 A. That was the sign that was on the building on February

22 25th when we received the complaint when I went to look at it.

23 Q. It reads "Fire Chief Wild Bill McCormack Resign?"

24 A. Yes.

25 Q. You received a complaint from the HARB board chairman

1 about that sign?

2 A. Yes, we did.

3 Q. And I believe you testified that you sent the letter to

4 Mr. Riel and Ms. Thompson?

5 A. At that time, yes.

6 Q. The second page of Exhibit G is a copy of a letter dated

7 February 25, 2004, it appears to be signed by you, is this the

8 letter that you're talking about?

9 A. Yes, it is.

10 MR. LANZILLO: For the record it states "this letter

11 serves as notification to you that the sign that had been

12 installed on the above-referenced property is in violation of

13 the Bradford City Ordinances 2866.1, Historic Preservation and

14 specifically Section 125-15(E)(1), copy attached." Did you in

15 fact attach a copy of the ordinance?

16 A. Yes, I did.

17 Q. The second paragraph states that "this property is

18 located within the boundaries of the City of Bradford Historic

19 District and prior to erection of any sign HARB board approval

20 must be obtained and a certificate of appropriateness issued by

21 Bradford City Council to allow the Building Inspector to issue

22 the necessary sign permit." It goes on to state "you hereby

23 are directed to immediately remove the above-mentioned sign

24 until such required approval and permits are obtained." It

25 goes on to explain the consequences. Also notes where HARB

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1 applications may be obtained at City Hall, correct?

2 A. Correct.

3 Q. Now, after you sent this letter, did you have any further

4 contact directly with Mr. Riel?

5 A. I had contact on the 5th of March.

6 Q. Tell me what happened after you sent this letter, and

7 just so the record is clear, did you send an identical letter

8 to Ms. Thompson?

9 A. That identical letter, yes.

10 Q. Other than the addressee, of course. Now, tell me what

11 happened after you sent this letter?

12 A. Okay, the time limit that they were given expired. And

13 on the 5th of March they were issued citations, but Mr. Riel

14 had took the signs down the 5th of March. So I withdrew the

15 citations and on that day I talked to him, he informed me he

16 had taken the sign down. I thanked him for his cooperation,

17 and I had withdrawn the citations. And at that time he asked

18 me possibly if he would be allowed to put the signs inside the
19 building. I said I would check on it. I reread the ordinance,
20 I said it says externally, in my opinion you would be able to
21 put the signs inside your window.

22 Q. So you told him that he could display the sign lawfully
23 if it was inside the window?

24 A. Yes, I did.

25 THE COURT: What happens with each citation, I don't

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1 remember, is there a fine?

2 THE WITNESS: There is a fine.

3 THE COURT: Per citation?

4 THE WITNESS: Per citation.

5 THE COURT: Okay, go ahead.

6 BY MR. LANZILLO:

7 Q. And each sign is a separate violation?

8 A. Yes.

9 Q. What happened after you issued and then withdrew the
10 first citation?

11 A. After our conversation on Monday the 8th, the signs were

12 reinstalled, that was over a weekend, I again issued a

13 citation. Those I left stand.

14 Q. And what happened after that?

15 A. There were additional signs put up, there were additional

16 citations issued, I was out of town at the time. Mr. Corignani

17 issued some and I issued again another one, where additional

18 signs were added.

19 Q. Did Mr. Corignani or his wife, the Mayor, Mrs. Corignani,

20 initiate this activity?

21 A. No, they did not.

22 Q. Now, you were here for Mr. Peterson's testimony earlier?

23 A. Yes, I was.

24 Q. There was testimony regarding political signs being

25 treated as exempt under the HARB ordinance. What is your

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1 understanding concerning political signs, are they generally

2 exempt under the HARB ordinance?

3 A. It would be my understanding, I assumed because I had

4 received a complaint from the HARB board chairman, that these

5 signs did not fall under that category or there wouldn't have

6 been a complaint.

7 Q. What about political signs in general?

8 A. I'm not familiar with that part of the Zoning Ordinance,

9 but they say they're not.

10 THE COURT: You've got to keep your voice up. Run

11 that by me one more time.

12 BY MR. LANZILLO:

13 Q. Is it your understanding, and I'm asking for your

14 understanding, or whether political signs, campaign signs are

15 exempt or nonexempt under --

16 A. It's my understanding they're exempt.

17 Q. They are exempt.

18 THE COURT: Can I ask you a clarification here. The

19 term exempt is a term of art under the statute. And it means,

20 it could mean, for instance, if you're part of that

21 noncommercial signage, it can't be bigger than 12 feet. The

22 question is, I don't want to tell you what to ask him, so I'll

23 ask him. To your understanding, you heard the testimony from

24 the other fellow over there, Mr. Peterson, are candidacy signs

25 covered at all under 178 such that they don't even have to be

1 specially exempted because the statute, nor 125, doesn't cover
2 them at all, what's your understanding of that?

3 THE WITNESS: My understanding it would be exempt,
4 political signs, the signs put in your yard to vote for so and
5 so, that would be my understanding of political signs. I think
6 you look at a safety issue. I would look at, size wise and
7 where they're placed and how they're attached, that would be
8 the only thing I would look at.

9 BY MR. LANZILLO:

10 Q. Do you know whether in either of the ordinances at issue
11 here there's any reference whatsoever to political signs or
12 candidacy signs as exempt or otherwise?

13 A. No, it just says externally affixed sign has to be
14 approved by HARB. If he applied for an application and they
15 deemed the sign was all right, as far as I was concerned that's
16 fine.

17 MR. LANZILLO: That's all the questions I have,
18 thank you.

19 THE COURT: Mr. Friedman.

20 CROSS-EXAMINATION

21 BY MR. FRIEDMAN:

22 Q. Mr. Silvis, you said that the chairman of the HARB board
23 is the one that told you to cite Mr. Riel, is that correct?

24 A. No, it's not correct.

25 Q. He's the one that filed the complaint?

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1 A. He called our office with the complaint, yes.

2 Q. And his complaint was what?

3 A. That there had been a sign affixed to the building
4 without their approval.

5 Q. Did he talk to you?

6 A. No, he talked to our secretary.

7 Q. Did you have any conversations with him at all about
8 this?

9 A. I did not.

10 Q. Now, you said that you felt that this was not a political
11 sign because the HARB chairman was the one that told you to
12 cite him, is that correct?

13 A. He did not tell me to cite him, he told me that they had
14 not received an application to affix the sign to the building.

15 Q. You assumed because he said that, that it must not be in

16 that exempt category of political signs, is that right?

17 A. I wouldn't take that myself, if they decided that it was

18 okay, then it would be fine. I just notified them that he

19 needed HARB board approval to attach the sign to the building.

20 Q. So your only involvement in this whole thing was you

21 filled out the piece of paper, it said you need HARB approval,

22 whether he needs it or not is something for somebody else to

23 decide, is that right?

24 A. I would say if they determined that he didn't, that's as

25 far as I would go with it.

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1 Q. In fact, violations of the HARB statute carries not only

2 a fine but potential jail time, is that correct?

3 A. It does say that, yes.

4 Q. It says up to 90 days in jail?

5 A. It does say that.

6 Q. And with each sign the penalty goes up, doesn't it?

7 A. It can, yes.

8 MR. FRIEDMAN: Thank you, that's all I have.

9 THE COURT: Before you sit down, put on the screen

10 the hanging sign, the three hanging signs.

11 MR. FRIEDMAN: These ones, judge?

12 THE COURT: Yes. Those are the signs that generated

13 the citations, right?

14 THE WITNESS: Correct.

15 THE COURT: I'm only asking for your opinion, how

16 you understand things to work there. If instead of those signs

17 saying what they said, each of those signs, same dimensions,

18 same placement, said "Vote Riel For Mayor," would you be giving

19 him a citation?

20 THE WITNESS: I would assume that would be a

21 political sign.

22 THE COURT: It would be by your definition, but

23 would you then give him a citation?

24 THE WITNESS: I wouldn't give him a citation, no.

25 If he went through the proper procedure and they determined it

1 was a political sign and it was legal, I wouldn't give him a

2 citation, no.

3 THE COURT: Here's my question, I'm trying to

4 understand this. Is it your understanding that if he put "Vote

5 For Riel" up there three times, that he would have been

6 required, prior to doing that, to obtain the permission of

7 HARB?

8 THE WITNESS: As I read the HARB board ordinance, he

9 would have.

10 THE COURT: He would have?

11 THE WITNESS: As I read it, he would have, yes.

12 THE COURT: All right.

13 BY MR. FRIEDMAN:

14 Q. It is the practice, though, of the City of Bradford, that

15 political signs like that are exempt from HARB approval, you

16 don't have to get HARB approval?

17 A. To affix them to the building permanently, those are

18 affixed permanently in my opinion.

19 Q. Do you know?

20 A. I don't know.

21 MR. FRIEDMAN: Thank you.

22 THE COURT: Thank you, sir. Do have anything else,

23 Mr. Lanzillo?

24 MR. LANZILLO: No, your Honor.

25 THE COURT: All right, call your first witness.

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1 MR. FRIEDMAN: Mr. Pysher.

2 THE CLERK: Please state and spell your full name,

3 sir?

4 THE WITNESS: Frederick, F-r-e-d-e-r-i-c-k, A,

5 middle initial, Pysher, P-y-s-h-e-r.

6 FREDERICK PYSHER, PLAINTIFF HEREIN, SWORN

7 DIRECT EXAMINATION

8 BY MR. FRIEDMAN:

9 Q. Mr. Pysher, would you please give us your full name and

10 address?

11 A. Frederick Allen Pysher, 1001 South Avenue, Custer City,

12 PA.

13 Q. What is your occupation, sir?

14 A. I am a full-time real estate broker and owner of Upper

15 Allegany Realty located at 39-43 Mechanic Street.

16 Q. How long have you been a realtor, sir?

17 A. I have been involved in real estate for three years as a

18 salesperson, and then 21 years as a broker/owner.

19 Q. Are you licensed in the Commonwealth of Pennsylvania?

20 A. Yes, I am.

21 Q. How long have you been licensed?

22 A. For 24 years.

23 Q. Do you own property in the City of Bradford?

24 A. Yes.

25 Q. What is the address of that property?

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1 A. 39-43 Mechanic Street.

2 Q. Is that your realtor office?

3 A. 43 Mechanic, yes.

4 Q. Is that located within the Historical District of the

5 City of Bradford?

6 A. Yes, it is.

7 Q. Were you cited for a violation of HARB, sir?

8 A. Yes, I was.

9 Q. Tell the court how you were cited, under what

10 circumstances?

11 A. I ordered a sign to be done by a professional sign

12 painter to go inside the inside of my window. But once I

13 received it, I placed it on the outside to see if it would
14 garner more attention and then to determine whether it should
15 be on the outside or the inside. I was issued a citation on
16 February 25th. Two days later, on the 27th of February, I
17 moved the sign inside where it's been ever since. And I've
18 been in compliance ever since then.

19 Q. And are you interested in posting signs on your business
20 in the future?

21 A. As a business owner, I am promoting my business, yes, I
22 would.

23 Q. Now --

24 A. Potentially.

25 Q. Did you have occasion to determine whether or not other

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1 businesses located within the Historical District of the City
2 of Bradford had obtained permits for their signs?

3 A. Yes.

4 Q. How did you go about doing that?

5 A. On April the 8th I requested from the City Clerk's office
6 a list of all sign permits issued in the City of Bradford

7 dating back from March 8, 2004 to March 8, 1999.

8 Q. And would this have covered all signs placed between 1999

9 and the present, as far as you know?

10 A. That was my assumption, yes.

11 Q. Now, there was testimony that they could have also

12 authorized signs pursuant to building permits within that time

13 period. Were you aware of any buildings going up within that

14 last five-year period in the Historical District?

15 A. In the Historical District?

16 Q. I'm only speaking about the Historical District?

17 A. No, I'm not.

18 Q. But as far as you were able to determine, the records

19 provided to you by the City of Bradford included all signs that

20 were posted during that five-year period, is that correct?

21 A. Yes.

22 Q. And at my request did you go through the Historic

23 District and take photographs?

24 A. Yes, I did.

25 Q. Of those various signs?

1 A. Yes, I did.

2 MR. FRIEDMAN: Your Honor, Mr. Pysher prepared a
3 large map, I have a small map which I can put on the display,
4 but it's very difficult to see. This may be easier.

5 THE COURT: Why don't you bring it up here.

6 MR. FRIEDMAN: Why don't you, if you will, hold this
7 up so the judge can see it.

8 THE COURT: Mr. Lanzillo, you might want to come up
9 to get a better view. Go ahead.

10 BY MR. FRIEDMAN:

11 Q. Mr. Pysher, why don't you go ahead, first of all, and
12 just show us on the map the location of -- let me start over
13 again. I'm placing on the overhead projector what we've marked
14 as block A, can you indicate on there where block A is located?

15 A. Block A would be right here (indicating). 2 Main Street
16 called the Seneca Building.

17 Q. Are there signs on the Seneca Building, sir?

18 A. Yes, there are.

19 Q. Can you tell us were you able to determine whether or not
20 the signs on the Seneca Building had permits?

21 MR. LANZILLO: Your Honor, if I could enter an

22 objection for the record. This testimony is a compilation of
23 information based upon other records, which is improper without
24 the underlying substantive materials present in the courtroom.

25 THE COURT: Well, it's a foundational objection?

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1 MR. LANZILLO: It is.

2 THE COURT: Well, ask what's the foundation for his
3 knowledge.

4 MR. FRIEDMAN: I can do that again, your Honor.

5 BY MR. FRIEDMAN:

6 Q. Mr. Pysher, did you obtain reports from the City of
7 Bradford concerning permits issued for signs in the Historic
8 District?

9 A. Yes, I did, within a five-year period.

10 Q. Let me show you what I'll mark as Plaintiff's Exhibit 20,
11 and are those the reports that were supplied to you by the City
12 of Bradford?

13 A. Yes.

14 Q. And do those reports in fact indicate which signs had
15 permits issued for them during that five-year period from 1999

16 to the present?

17 A. Yes, sir.

18 THE COURT: All right, the objection is overruled.

19 BY MR. FRIEDMAN:

20 Q. Are those the documents that you relied upon in preparing
21 your exhibit?

22 A. Yes, sir.

23 Q. Now, sir, going back to block A, you've indicated to the
24 court the location, and that is 2 Main Street, Bradford, the
25 Seneca Building, is that correct?

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1 A. Yes, it is.

2 Q. Were you able to determine -- first of all, are there
3 signs located on the building at that location?

4 A. Yes, there are eight signs.

5 Q. Show those to us?

6 A. Pardon me.

7 Q. Do you have a hearing problem, Mr. Pysher?

8 A. Yes, I do, I have two hearing aids, and I apologize for
9 whispering earlier. This is the Seneca Building. There are

10 two Main Street manager signs. Two Bradford Chamber of

11 Commerce signs. Two downtown Bradford signs. And two Bradford

12 Cool Town and Warren Parts signs. And there was only one wall

13 sign permit.

14 Q. So of all the signs at that location, how many had

15 permits and how many did not?

16 A. One permit, seven did not.

17 THE COURT: Sir, tell you what, why don't you sit

18 down and just kind of lay it on the side there.

19 MR. FRIEDMAN: Judge, these are actually copies of

20 all photographs, they might be easier to see for you if you can

21 disregard the commentary on there.

22 MR. LANZILLO: Your Honor, if I may, I will renew my

23 objection.

24 THE COURT: Let me ask you this, by way of following

25 up, are these things marked as exhibits?

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1 MR. FRIEDMAN: I have marked them, your Honor. I

2 have not marked the copies that you have. The ones on the

3 overhead are marked.

4 THE COURT: Are these the same?

5 MR. FRIEDMAN: They are the same, I provided them to
6 counsel.

7 THE COURT: Let's see if we can save some time, if
8 we can. Is it the City's position that the properties that he
9 has testified to and is about to testify to, I assume you've
10 seen the packet of materials here, as a matter of fact are
11 permitted contrary to his present belief?

12 MR. LANZILLO: The problem is, your Honor, I don't
13 know. I would have to go through those materials, have someone
14 inspect these signs. More to the point, they requested a
15 summary, not the permits themselves, I don't know what's
16 covered by these permits. I literally would have to have
17 someone go through to respond to this testimony.

18 THE COURT: Put it this way. At the risk of further
19 prolonging the hearing, I will leave open the possibility of
20 some rebuttal on this point if you come to the conclusion that
21 it is inaccurate. All right, go ahead.

22 MR. FRIEDMAN: Your Honor, not to prolong this
23 matter, my intent was to go through each set of signs and have
24 Mr. Pyscher testify as to the signs --

25 THE COURT: For our purposes, it's sufficient to

1 say, one, the pictures speak for themselves; two, are they all
2 within the Historical District?

3 THE WITNESS: A through K.

4 THE COURT: All right. And, three, it is the
5 plaintiffs' contention, based on his investigation, that they
6 are non-permitted, is that right?

7 THE WITNESS: Correct.

8 THE COURT: All right.

9 MR. FRIEDMAN: With that, your Honor, I would just
10 move for the admission of Plaintiff's Exhibits 2 through 17
11 without having to go through each one.

12 THE COURT: Are those all pictures?

13 MR. FRIEDMAN: They are, your Honor.

14 THE COURT: What do you want say, Mr. Lanzillo?

15 MR. LANZILLO: Only, your Honor, by way of my
16 earlier foundation objection, I would have no further
17 objection.

18 THE COURT: There's no waiver construed, but they're
19 admitted.

20 MR. LANZILLO: One question, if I may, to facilitate
21 our view of them, is there a copy of those available for me.

22 MR. FRIEDMAN: Yes. With that, your Honor, I have
23 no further questions.

24 THE COURT: I have one. You know the sign you said
25 you put up?

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1 THE WITNESS: Yes.

2 THE COURT: And then you put inside your business?

3 THE WITNESS: Yes, sir.

4 THE COURT: Is that one of the signs I saw on the
5 screen today?

6 THE WITNESS: No, you did not. The sign measures 81
7 inches in width or length, about 28 inches high, fits exactly
8 inside my window and it says "We Get Results, Don't Hesitate,
9 List With Us Today."

10 MR. FRIEDMAN: I was looking for that, your Honor.
11 That's actually the sign, your Honor.

12 THE COURT: Where is that now?

13 THE WITNESS: It's on the inside of the front

14 window, it used to be directly to the right above my entrance
15 to the door. That was exterior, now it's interior. It was two
16 days after my courtesy call from Mr. McCormack.

17 THE COURT: I apologize, you did or did not get
18 cited for that?

19 THE WITNESS: I was the first person to be cited for
20 violating the sign ordinance in the history of Bradford since
21 1971.

22 THE COURT: But for this sign you were cited?

23 THE WITNESS: Yes.

24 THE COURT: And then you put that sign inside --

25 THE WITNESS: I put the sign in two days after a

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1 courtesy call, I received a citation in the mail, it was
2 formally cited April 8th -- I'm sorry, it was formally cited
3 March 8th, it was postmarked March 9th, I received it March
4 12th.

5 THE COURT: What happened to the citation?

6 THE WITNESS: It's still outstanding, I'm held
7 accountable to it.

8 THE COURT: All right.

9 MR. FRIEDMAN: Your Honor, for the record I will
10 mark that photograph as Plaintiff's Exhibit 21, I would move
11 for its admission.

12 THE COURT: It's admitted. All right, Mr. Lanzillo,
13 has the opportunity to cross-examine you.

14 MR. LANZILLO: I'll be brief at this time, your
15 Honor.

16 CROSS-EXAMINATION

17 BY MR. LANZILLO:

18 Q. Mr. Pysher, you mentioned that you moved the sign from
19 its exterior-mounted location to the inside of a window, is
20 that correct?

21 A. Yes, sir.

22 Q. Isn't your understanding that signs mounted inside
23 windows and doors are not subject to the sign ordinances?

24 A. Correct.

25 Q. And for signs that are displayed in windows and doors on

1 your premises, no one has asked you to get a permit or anything

2 else?

3 A. There's no need for the permit.

4 Q. Now, has anyone from the HARB board or the City or the

5 Building Inspector's office for that matter ever tried to tell

6 you what you could or could not say in your signs?

7 A. On my signs, no.

8 Q. Am I correct that in 2002 you decided to put up a new

9 sign at your place of business, I think you mentioned 43

10 Mechanic Street?

11 A. Yes.

12 Q. Is that correct, you did place a sign?

13 A. Yes, I did.

14 Q. Did you submit an application for HARB board approval?

15 A. No, I did not.

16 Q. You did not submit an application for HARB board

17 approval?

18 A. Not prior to being maligned in the newspaper two days on

19 the front page.

20 Q. But --

21 A. I did eventually, yes.

22 Q. So you did apply to HARB on or about July 18, 2002?

23 A. Yes.

24 Q. And you promptly received HARB approval, did you not?

25 A. Yes, I did.

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1 Q. And very shortly thereafter, by July 23, 2002, City

2 Council voted to issue a certificate of appropriateness?

3 A. It had already been up for two weeks or three weeks or

4 something.

5 Q. Your sign?

6 A. Oh, yeah, the sign had been in place.

7 Q. But my question is, within a week of applying to the HARB

8 for approval, you had City Council approval of the sign?

9 A. Yes.

10 Q. Do you believe the creation of the Historic District has

11 been good for the City of Bradford?

12 A. I don't know, it has yet to be determined.

13 Q. Now, you didn't find the HARB approval process to be

14 burdensome, did you?

15 A. It was more than what I expected to have to do on my own

16 private property.

17 Q. From start to finish, it took less than a week to get

18 HARB approval and a certificate of appropriateness, is that

19 correct?

20 A. Something like that, it was several years ago.

21 Q. Are you aware of any instance where an application for a

22 sign permit by HARB or a certificate of appropriateness under

23 HARB has ever been denied based upon the content of the sign?

24 A. I wouldn't have that knowledge.

25 Q. Now, on February 24, 2004, did you write to the HARB

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1 requesting information regarding HARB procedures?

2 A. On February 25th, the day that I was issued the courtesy

3 call by Mr. McCormack, I responded immediately by writing a

4 letter to the HARB board addressing my concerns and including a

5 check for \$30, \$10 more than what the required fee was.

6 Q. Okay. Now, you mentioned a courtesy call from Mr.

7 McCormack?

8 A. Yes.

9 Q. Could you tell me what was said in that call?

10 A. He called and said are you aware, Mr. Pysher, that your

11 sign above your entrance is in violation of the current sign

12 ordinance; my response was yes.

13 Q. So it truly was a courtesy call to make sure that you

14 weren't unaware of the requirements of the law?

15 A. Absolutely.

16 Q. And you then wrote a letter to the HARB board inquiring

17 about the process and standards?

18 A. No, I expressed my concerns. I wanted to exchange or

19 engage in dialogue.

20 Q. And how quickly did the HARB board respond?

21 A. The date on the letter that was sent by certified mail

22 from Mark Luciano, the president of the board, was dated March

23 27th. The day that I had already had the sign in compliance,

24 did not receive it for about 10 or 12 days later. I was not

25 present at lunchtime when the postal delivery person brought

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1 the letter in, left a little note that I had something to pick

2 up at the post office.

3 Q. So they attempted delivery earlier, it took you a while

4 to go pick it up?

5 A. Yes.

6 Q. Just for the record, can you tell me is this the letter
7 that you received in response to your inquiry?

8 A. I can't read it real well.

9 THE COURT: Just bring it up.

10 BY MR. LANZILLO:

11 Q. This is marked as Defendant's Exhibit M --

12 A. The date on this letter is the exact date that I was in
13 compliance by moving the sign inside and it has been there ever
14 since. I don't know what date I received it, but it was about
15 10 days later.

16 Q. Thank you, sir. My only question is, is this the letter?

17 A. Yes, it is.

18 Q. And attached as the second page for context is?

19 A. My six comments to the board dated February 25th.

20 Q. And a copy of the check?

21 A. Absolutely.

22 Q. You understand that there is no fee for HARB approval or
23 a HARB permit?

24 A. Pardon me.

25 Q. Do you understand that there is no fee for a HARB

1 certificate of appropriateness, that the fee is under the other
2 ordinance, Section 178?

3 A. I do now.

4 THE COURT: I'm confused. You sent a check for how
5 much?

6 THE WITNESS: \$30.

7 THE COURT: What did you think that was for?

8 THE WITNESS: Two years ago they had charged me \$30
9 for my large sign on the outside of the building. I didn't
10 want them thinking I was trying to cheat them out of any money.

11 THE COURT: Did they cash your check?

12 THE WITNESS: No, they did not, they sent it back.

13 THE COURT: Okay. Go ahead.

14 MR. LANZILLO: I would move into evidence Exhibit M.

15 THE COURT: It's admitted.

16 MR. LANZILLO: Your Honor, that's all I have at this
17 time subject to my earlier request to review and verify the
18 information conveyed.

19 THE COURT: All right. Do you have anything else of
20 this man?

21 MR. FRIEDMAN: Nothing further, your Honor.

22 THE COURT: Thank you, sir. Call your next witness.

23 MR. WALCZAK: Plaintiffs would call Tom Riel.

24 THE CLERK: State your name and spell it for the

25 record, sir?

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1 THE WITNESS: Thomas Riel, R-i-e-l.

2 THOMAS RIEL, PLAINTIFF HEREIN, SWORN

3 DIRECT EXAMINATION

4 BY MR. WALCZAK:

5 Q. Would you state your name?

6 A. Thomas Riel.

7 Q. Where do you live, Mr. Riel?

8 A. I live at 56 Mechanic Street in the City of Bradford.

9 Q. Do you live within the Historic District?

10 A. I do live in the Historic District, yes.

11 Q. The property that we've been discussing, one of the

12 properties we've been discussing where there are signs posted

13 saying "How Unethical is Mayor Henry", is that property you

14 own?

15 A. That's property that I jointly own with Diane Thompson.

16 Q. And that is in fact located in the Historic District?

17 A. It is located in the Historic District, two doors from

18 where I live.

19 Q. You've had problems with your signs in the City of

20 Bradford for quite sometime?

21 A. Yes, dating back to I believe February 1, 2001, is when

22 it started, when Mr. Peterson had sent me a letter demanding I

23 take down signs that were similar to the ones shown on Seward

24 Avenue, not in the Historic District. They were the red signs

25 with white lettering.

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1 Q. Sir, if I show you what's been marked as Exhibit A-5,

2 would that be an example of a sign you had up several years

3 ago?

4 A. Yes, those are signs I was kind of putting up a few years

5 ago, putting them up on my property owned just by me. One sign

6 at a time.

7 Q. And it's a sign that is currently up under Exhibit A-5,

8 that's one of the signs you had up?

9 A. That's one, yes. I had many but only one at a time.

10 THE COURT: Mr. Riel, two things. Don't talk over
11 him because this guy has to get down what you're saying, and
12 you're one of these folks who talk fast, so try to slow down.

13 THE WITNESS: I'll slow down, your Honor, I'm sorry.

14 BY MR. WALCZAK:

15 Q. Is the sign depicted in Exhibit A-5 located on property
16 that you own?

17 A. It was located on property that I own.

18 Q. And is that property within the City of Bradford?

19 A. Yes.

20 Q. Is it within the Historic District?

21 A. No.

22 Q. So it's your understanding it's subject to Chapter 178
23 but not 125?

24 A. Yes, according to Mr. Peterson at the time.

25 Q. How big was that sign "What Is A Political Prostitute?"

1 A. All of the signs I placed at that location were four foot
2 by four foot for a total of 16 square feet.

3 Q. And are those signs still up?

4 A. There is no sign presently up at that location, there

5 hasn't been for a month or two.

6 Q. When is the last time you put up a sign on that property?

7 A. Oh, the last time I put up a sign on that property was --

8 would be last fall prior to the November election, maybe in

9 October.

10 Q. What did the sign say?

11 A. The sign said "Stop The City Hall Puppet Show." "Vote

12 Riel For Mayor."

13 Q. How big was that sign?

14 A. Initially, four foot by four feet. But after the

15 election I cut off across the bottom where it says "Vote Riel

16 For Mayor" because the election was over.

17 Q. So that sign actually promoted your candidacy?

18 A. Initially, yes.

19 Q. And it was 16 square feet?

20 A. Initially, yes.

21 Q. And did anybody tell you that you had to take it down?

22 A. No. I had not been told I had to take down any signs at

23 that location since Mr. Peterson had told me I had to back in

24 2001.

25 Q. Tell us what happened back in 2001, you were asked to

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1 take down a sign similar to this, four feet by four feet,

2 located on your private property outside the Historical

3 District, what happened after that?

4 A. I placed the sign up February 1, 2001. Later that day a

5 registered letter was mailed to me from Mr. John Peterson,

6 telling me that the sign was in violation, I don't off the top

7 of my head recall, but essentially saying I needed to have a

8 permit or a permit to put it there. Giving me three days to

9 take the sign down. At the time I spoke to Mr. Peterson about

10 it on a Saturday, I called him at home and talked to him. And

11 he said he wouldn't count the weekend as three days and I

12 initially did take the sign down, but I did put others back up.

13 Q. Eventually through negotiations with --

14 A. Yes, eventually.

15 Q. Why don't you wait until I finish.

16 A. I'm sorry.

17 Q. Eventually -- I want to me try to short circuit this a

18 little bit, negotiations took place between the American Civil
19 Liberties Union and the City of Bradford and you were allowed
20 to keep those signs up?
21 A. Yes, the City of Bradford agreed to amend their sign
22 ordinance to make it constitutional, which they dragged that
23 out over the course of a year and a half to two years, I don't
24 believe they have did make it constitutional as they said they
25 would.

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1 THE COURT: Well, I'll decide that.

2 THE WITNESS: Yes, your Honor.

3 THE COURT: Go ahead.

4 BY MR. WALCZAK:

5 Q. Are you aware of whether or not the ACLU said to the City
6 of Bradford that you had to allow commercial signs up to 12
7 square feet?

8 A. I'm not aware that the ACLU had done that.

9 Q. I'll show you what's been marked as Defendant's Exhibit

10 B, is that a sign that you posted?

11 A. Yes, that's the sign I put up in October of 2003.

12 Q. And what does that sign say?

13 A. That signs says make "City Council A Democratic Forum

14 Again, Vote Riel For Mayor."

15 THE COURT: I'm sorry, sir, can you do that one more

16 time?

17 THE WITNESS: "Make City Council A Democratic Forum

18 Again, Vote Riel For Mayor."

19 THE COURT: All right.

20 BY MR. WALCZAK:

21 Q. Where is that building located?

22 A. That building is on at the intersection of, I believe

23 it's Interstate Parkway and North Bennett Street.

24 Q. Is that in the Historic District?

25 A. No.

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1 Q. But it is within the City of Bradford?

2 A. Yes.

3 Q. How big is that sign?

4 A. That sign is four foot by eight foot for a total of 32

5 square feet.

6 Q. Is that a fairly well-traveled area?

7 A. Yes, you can see the road widens right there.

8 Q. Is it considered downtown Bradford?

9 A. It's in the City of Bradford.

10 Q. How long was that up, I'm sorry?

11 A. I put that sign up in early October of 2003, and I just

12 took it down about a week ago.

13 Q. Were you given any notice by City of Bradford officials

14 that that sign was in violation of any ordinance?

15 A. No.

16 THE COURT: Sir, is that hanging or is that painted?

17 THE WITNESS: That's a hanging sign.

18 THE COURT: From the side of the building?

19 THE WITNESS: Yes, sir.

20 BY MR. WALCZAK:

21 Q. What's that made of?

22 A. It's made of a material, I believe it's called corplast,

23 it's like a weather resistant cardboard, so to speak, with

24 vinyl leathering on it.

25 Q. Is that sign fairly heavy?

1 A. Probably only weighs two or three pounds. The screws to
2 hold it in probably weigh more than the sign.

3 Q. And whose building is that?

4 A. That is a friend of mine's building.

5 Q. So you posted that with his permission?

6 A. Yes.

7 Q. The signs for which you were cited in February or March
8 of this year, those aren't the first ones you've displayed on
9 that property, is it?

10 A. No.

11 Q. What's the address of that property?

12 A. 52 Mechanic Street in the City of Bradford.

13 Q. Did you display some signs on that property last year?

14 A. Yes.

15 Q. And how many?

16 A. I don't know, maybe a total of eight or so.

17 Q. And do you remember were those signs expressing a
18 message?

19 A. Yes.

20 Q. Do you remember what the messages were on those signs?

21 A. I didn't write them all down, but I know some of them

22 were political, said "Two Mayors, Two Lawyers Too Much Money."

23 They were all political actually. "Happy Election Year. The

24 Future of City Hall?" Things like that.

25 Q. And what were those signs made of?

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1 A. Plywood primarily and coroplast.

2 Q. What are the signs you've been cited for made of?

3 A. The signs that I was cited for at the time I believe were

4 all plywood, except one was corplast.

5 Q. The signs for which you were cited are made of the same

6 thing as the signs you had up last year?

7 A. Yes.

8 Q. And how were the signs last year affixed?

9 A. To the building the same.

10 Q. And did you get cited for the signs last year?

11 A. I didn't get cited, but I was sent a letter from the
12 chairman of HARB board asking me to take them down.

13 THE COURT: Excuse me, let me interrupt. The
14 picture that's up there right now, first of all, how is that
15 identified as an exhibit -- is it identified as an exhibit?

16 MR. WALCZAK: It's identified as Defendant's Exhibit

17 B.

18 THE COURT: All right.

19 MR. WALCZAK: It's the second page of Defendant's

20 Exhibit B.

21 THE COURT: Two questions. Have we identified and

22 do we have in the record by way of photograph the signs that he

23 just testified to that he got a letter on but was not cited

24 for?

25 MR. WALCZAK: We don't have a picture of that. Do

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1 you have a picture of those signs, Mr. Riel?

2 THE WITNESS: No, but the City probably does.

3 THE COURT: My question is, the photograph that's up

4 there, that's your friend's property, is that right?

5 THE WITNESS: Yes.

6 THE COURT: Is that where, did you put the signs

7 that you generated the letter in the same place where the sign

8 is up there right now?

9 THE WITNESS: No.

10 THE COURT: Where did you put them?

11 THE WITNESS: The building at 52 Mechanic Street,
12 where there were multiple signs in one location.

13 THE COURT: Who owns 52 Mechanic Street?

14 THE WITNESS: I own 52 Mechanic Street with Diane
15 Thompson.

16 THE COURT: Okay. But this picture up here is owned
17 by your friend, is that right?

18 THE WITNESS: Yes.

19 THE COURT: That's not where the signs were that
20 generated the letter from the City, that was on your own
21 property and her property?

22 THE WITNESS: Yes. Right here in this picture
23 that's up there now.

24 BY MR. WALCZAK:

25 Q. Plaintiff's Exhibit 1. And that is the building that has

1 the hand-lettered signs outside, is that 52 Mechanic Street?

2 A. Yes.

3 Q. And that's the building you own?

4 A. Yes, I own with Diane Thompson, yes.

5 Q. Are the signs that are up there are the ones you received

6 a citation for?

7 A. Initially, I put up a couple more and got a couple more

8 citations after those three were up.

9 Q. And last year the signs about which you just testified

10 were hanging on the same building?

11 A. Yes, on the outside of the building above the door in the

12 center, and some of them were upstairs on the outside of the

13 building on the second floor.

14 Q. They were made of the same material?

15 A. Yes.

16 Q. Were they also hand lettered?

17 A. Primarily, yes. I may have put up one coroplast.

18 THE COURT: That's in the Historic District, is that

19 right?

20 THE WITNESS: Yes, that's in the Historical

21 District.

22 THE COURT: I apologize, but we got a lot of signs

23 flying here. We're a long ways from those signs, do we have a

24 closeup of them somewhere, do we have a closeup of those?

25 MR. WALCZAK: This document -- if we could mark this

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1 as Plaintiff's Exhibit 22.

2 THE COURT: So I'm clear, Mr. Pysher, that is
3 property owned by you and Ms. Thompson?

4 THE WITNESS: Mr. Pysher is back there, I'm Mr.
5 Riel.

6 THE COURT: I apologize, Mr. Riel.

7 THE WITNESS: This is the property that I co-owned
8 with Diane Thompson, those are my political signs that I put
9 up, Ms. Thompson did not.

10 THE COURT: All right. Those are the political
11 signs that generated citations, let me put it this way. Those
12 are the signs that generated the citations, is that right?

13 THE WITNESS: Yes.

14 THE COURT: Go ahead.

15 BY MR. WALCZAK:

16 Q. You were also cited for two other signs, is that right?

17 A. Yes, I was cited for additional signs after those.

18 Q. Do you remember what those signs said?

19 A. Those signs said -- the signs that are up there now I

20 received a total of two citations for all three of those signs.

21 Then I got three more additional signs, which there's a photo

22 there somewhere, one of them said "Stop The City Hall Puppet

23 Show," then I had the Mayor Henry sign underneath.

24 Q. The top sign said?

25 A. The top sign said "Stop The City Hall Puppet Show, Mayor

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1 Henry."

2 Q. And the next sign?

3 A. The next sign said -- I'm trying to think here.

4 THE COURT: Is it fair to say they were all

5 similarly themed?

6 THE WITNESS: They were all similar political signs,

7 yes.

8 THE COURT: All right.

9 MR. WALCZAK: I have nothing further, your Honor.

10 CROSS-EXAMINATION

11 BY MR. LANZILLO:

12 Q. I want to make sure I have the properties we're talking

13 about straight here. We're really talking about three
14 properties where you have posted signs. One is the vacant lot
15 located on Seward Avenue. The other is the building owned by
16 your friend at the intersection of Interstate Parkway and
17 another street. And, finally, there is your property that you
18 co-own with Ms. Thompson at 53 Mechanic Street, is that
19 correct?

20 A. So far, yes.

21 Q. I take it from that you have other locations where you
22 post signs?

23 A. I placed them in many locations around the City.

24 Q. But the ones we've talked about today, the ones the court
25 had asked about, those are three locations?

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1 A. So far, yes.

2 Q. Now, I want to make sure I follow this. This is the
3 Interstate Parkway intersection location?

4 A. Yes.

5 Q. Is it your testimony that based on your understanding,
6 this sign did not comply with Section 178, it's too big?

7 A. I'm not ready to -- my feeling was the sign was exempt

8 because it was political.

9 Q. Now, you testified earlier this was larger you believe

10 than the 12 square feet?

11 A. It was exactly 32 square feet.

12 Q. And this sign was posted at a time when you were running

13 against Ms. Corignani for Mayor?

14 A. Mrs. Corignani?

15 Q. That's correct.

16 A. Yes.

17 Q. And no one from the City gave you any difficulty with

18 respect to this sign, is that correct?

19 A. Not until a couple months ago.

20 Q. A couple months ago. Have you ever been cited for this

21 sign?

22 A. No.

23 Q. Did you receive a warning letter?

24 A. Mr. McCormack, the Fire Chief, called the owner of the

25 building and asked him about having the sign taken down.

1 Q. Were you a party to that conversation?

2 A. No, that would have been a third party.

3 MR. LANZILLO: Move to strike as hearsay,

4 unresponsive.

5 THE COURT: I struck it.

6 BY MR. LANZILLO:

7 Q. So during the time that you were running against --

8 THE COURT: Let me rephrase that, it's late, there's

9 no such word as struck it, it's struck. Go ahead.

10 BY MR. LANZILLO:

11 Q. When you were running against Mrs. Corignani, no effort

12 was made to have you take your sign down or make you get a

13 permit at Interstate Parkway, is that correct?

14 A. No.

15 Q. No that's not correct?

16 A. No effort was made for me to take the sign down.

17 Q. Thank you. You were asked about some of the photos that

18 I previously marked as Defendant's Exhibit A -- by the way,

19 while this sign was up here in Defendant's Exhibit B, did you

20 see anyone climb up with a tape ruler or measurer and try to

21 ascertain its precise size, composition?

22 A. No, it was obvious it was 25, 30 square feet. But they

23 may have, I don't know. They have a bucket truck.

24 Q. You didn't see that, though?

25 A. No, I wasn't watching.

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1 Q. Now, I was unclear in your testimony, was this sign up on

2 Seward before or after the ordinance was amended, to include

3 the exemption for noncommercial signs up to 12 square feet?

4 A. I'm not sure whether that particular sign was before or

5 after, but I had similar signs up both before and after it was

6 amended at that location.

7 Q. Didn't you represent to members of the City that all of

8 the signs that you had placed after the amendment of the

9 ordinance were in fact 12 square feet or less, they were

10 compliant?

11 A. I don't believe I ever took that stance, no. Most of

12 them were 16 square feet.

13 Q. So what you're saying is that they may have missed some

14 that were noncompliant?

15 A. Depends on how you determine whether they were in

16 compliance, what I'm saying is the signs were almost all 16

17 square feet.

18 Q. Do you know if anyone went out and measured?

19 A. I know at the time initially when the controversy started

20 with the signs, Greg Henry, who is now special counsel to the

21 City, talked to me about the size of the signs.

22 Q. That wasn't my question. Do you know if anyone went out

23 and measured them?

24 A. I would believe that someone would have because Mr. Henry

25 apparently had knowledge of the size of sign, that led me to

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1 believe that someone had gotten a measurement.

2 Q. Well --

3 A. I didn't see anybody measure the sign, no.

4 Q. Do you believe that the City is going after you based on

5 the content of your signs?

6 A. I'm not sure, I believe that they're trying to keep me

7 from putting up politically expressive signs, yes.

8 Q. What you're saying here is they knew that you believed

9 that someone, Mr. Henry knew they had a noncompliant sign on

10 their hand expressing negative comments about the Mayor, and

11 they decided not to take advantage of an opportunity to cite

12 you or proceed against you in enforcement?

13 A. No, I'm saying the signs were up for several years and

14 all of a sudden now I'm being cited. Similar signs have been

15 up for years.

16 Q. And it's fair to say that since the amendment of the

17 ordinance, that added the exemption for noncommercial signs up

18 to 12 square feet, there had been no enforcement taken against

19 with you respect to any of the signs that you've posted on

20 Seward Avenue, is that correct?

21 A. That's correct.

22 Q. And no enforcement action has been taken against you with

23 respect to any signs, political or otherwise, that you've

24 posted on your friend's property on Interstate Parkway, is that

25 correct?

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1 A. Not yet, that's correct.

2 Q. The only signs where there have been any action against

3 you are in the Historic District, and that was based upon your

4 failure to obtain a HARB permit?

5 A. Only recently, yes.

6 Q. Now, last year, 2003, you had noncompliant signs or signs

7 that under the ordinance would require a permit and you were

8 contacted by the chairman of the HARB board, were you not?

9 A. Yes, I was contacted by him.

10 Q. So at this point in time, the citations at issue are not

11 the first time that there's been this issue concerning your

12 signs that have been raised in the Historic District, right?

13 A. No, it's not the first time.

14 Q. Did you remove your signs at that time in 2003?

15 A. I've taken the signs down and put other ones up,

16 sometimes there's no signs, there was usually only one up at

17 this location, sometimes two.

18 Q. Now, you understand that the City has no objection, does

19 not consider it to be a problem under its ordinances if you

20 place your signs inside of the windows of your building, is

21 that correct?

22 A. I understand that that's the City's interpretation,

23 that's not my interpretation.

24 Q. In fact, though, you have placed signs in windows at 53

25 Mechanic Street and no one has taken any enforcement action

1 against you, is that correct?

2 A. I didn't keep track of which signs I put inside and

3 outside, but I was not cited for any inside the window, that I

4 recall.

5 Q. And signs you placed in the windows have been critical of

6 Mayor Corignani and other public officials, have they not?

7 A. I only put a couple in the windows for convenience sake,

8 but yes, they were probably somewhat critical of her before

9 they started citing me.

10 Q. Let me show you what I've marked as Defendant's Exhibit

11 C; tell me is that a sign that you placed on the interior of

12 the building facing out through the window?

13 A. Looks like it.

14 Q. And reference to Madam Mayor, it to Mayor Corignani?

15 A. Signs are up to a matter of interpretation.

16 Q. You're the author of this sign, are you not?

17 A. Yes.

18 Q. Was your reference to Mayor Corignani?

19 A. I would think so, yes.

20 THE COURT: How many female mayors do you have?

21 THE WITNESS: We only have one elected female mayor.

22 BY MR. LANZILLO:

23 Q. Was any enforcement action taken against you with respect

24 to this sign?

25 A. I don't remember exactly when I put that sign up. But it

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1 was before they started citing me, yes, it was before.

2 Q. So the answer is no enforcement action was taken with

3 respect to the sign placed inside the window?

4 A. No, not at that time.

5 Q. Or any other sign you ever placed inside a window, is

6 that correct?

7 A. Yes.

8 Q. And your understanding is that you were cited for failing

9 to obtain a HARB certificate of appropriateness or a HARB

10 recommendation with respect to your exterior signs?

11 A. That's what they claim, yes.

12 Q. Now, you had utilized the HARB procedure before, haven't

13 you?

14 A. Only once.

15 Q. Okay.

16 A. Not in relation to signs.

17 Q. Right, it was with respect to an application for a

18 demolition permit?

19 A. Yes.

20 Q. You applied for a demolition permit, which is also

21 covered by the HARB ordinance on or about August 18, 2003?

22 A. Yes.

23 Q. And you received the preliminary approval from HARB on or

24 about August 21, 2003?

25 A. I don't have it in front of me, but that sounds close.

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1 Q. It was within a few days, wasn't it?

2 A. I had waited to apply until the third Thursday of the

3 month when they had the meeting.

4 Q. My question is after you applied, you got prompt

5 treatment from the HARB board, did you not, within a matter of

6 days?

7 A. Fairly prompt, yes.

8 THE COURT: Mr. Lanzillo, we're going to have to be

9 finishing up here pretty quick because my reporter is needed in

10 another chambers and we are going to have to continue this to

11 another day anyways.

12 MR. LANZILLO: Your Honor, since we will be coming

13 back, I'd suggest that we simply break at this point.

14 THE COURT: All right.

15 MR. WALCZAK: One housekeeping matter that is quite

16 important. The consent order that we signed back in March,

17 went until the date of the presumed hearing, which I believe

18 was April 20th. If counsel will simply stipulate to extend the

19 consent order.

20 THE COURT: I think that's a fair point. It seems

21 to me, but I will be guided by what the consensus of opinion

22 is, doesn't it make sense to continue the stipulation until

23 such time as I rule on the merits?

24 MR. LANZILLO: Yes, your Honor.

25 THE COURT: All right. And on that subject, it

1 seems to me, although this is styled as a preliminary

2 injunction hearing, I can see no reason, particularly since

3 we're going to go another day at least and everybody is going

4 to get a chance to say everything, that this should not be

5 converted into a final hearing on the merits, do you agree?

6 MR. WALCZAK: Plaintiffs agree, your Honor.

7 THE COURT: Do you agree with that, too, Mr.

8 Lanzillo?

9 MR. LANZILLO: Yes, your Honor.

10 THE COURT: All right.

11 MR. LANZILLO: Your Honor, quick question, if I may.

12 With respect to converting this to a final hearing on the

13 merits, if we're going to do that, we will have some latitude

14 with respect to evidence, any additional evidence that may be

15 presented at the next hearing. This obviously has been

16 presented in abbreviated fashion, I do anticipate some

17 rebuttal.

18 THE COURT: I'm going to give everybody sufficient

19 opportunity by way of leeway to get their story out so that you

20 won't be trying to do more than you can reasonably get done.

21 MR. LANZILLO: Your Honor, I would move for the

22 admission of Defendant's Exhibit C.

23 THE COURT: Exhibit C is admitted. Let's talk

24 about -- before we talk about rescheduling, let me talk about
25 an event that is about to occur in the future and how it's

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1 going to impact on what I'm doing here. When these statutes or
2 ordinances or portions of them are amended, I'm going to be
3 faced with -- I'm tilting at the right windmill right now. But
4 when you come back, whenever it is, within a week or so, I
5 won't be. And that raises all kinds of questions in my mind.
6 In other words, we may have all been tilling ground that
7 becomes moot, at least in part, by the time I see this new
8 ordinance. Frankly, there's been no briefing on it, all the
9 objections have been directed at this present ordinance. What
10 is your sense of this, Mr. Walczak?

11 MR. WALCZAK: We, your Honor, in fact our clients
12 were tentative enough to see that was going on at City Council,
13 they sent us a copy of what was preliminarily approved this
14 week. And as we read it, there are essentially two
15 semi-significant changes to what is presently before the court.

16 THE COURT: Not to interrupt you, but in the
17 interest of time, this is what I'm going to do. First of all,

18 let's get a date here. Go a little bit farther down there next

19 week. Does everybody have their schedules available?

20 MR. FRIEDMAN: I do not, your Honor.

21 MR. LANZILLO: I do not, your Honor.

22 THE COURT: All right. I'm going to have my deputy

23 clerk contact you about your availability of the week of May

24 10th, which the week preceding my trial term. When does the

25 statute become operative?

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1 MR. LANZILLO: The 11th, your Honor.

2 THE COURT: I'll have him contact you concerning a

3 new date, the 11th or thereafter, during that week. But then

4 prior to that time, I'm going to have a telephonic status

5 conference. First of all, I want the defendant to send me a

6 copy of the new ordinance that it is intending to pass. I only

7 need 125 and 178. Secondly, I'm going to schedule a telephonic

8 status conference in the nature of a pretrial conference so I

9 can streamline this next hearing so I know what the real

10 remaining issues are or are not. All right, that's all I have,

11 anything from anybody else?

12 MR. FRIEDMAN: Nothing further, your Honor.

13 MR. LANZILLO: No, your Honor.

14

15 (Whereupon, at 4:40 p.m., the proceedings were
16 concluded.)

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1 CERTIFICATE

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6 I, Ronald J. Bench, certify that the foregoing is a
7 correct transcript from the record of proceedings in the
8 above-entitled matter.

9

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13 _____

14 Ronald J. Bench

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